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Additional Information and Copies

The Department of Defense Office of the Deputy Inspector General for Policy and Oversight, Assistant Inspector General for Investigative Policy and Oversight, prepared this report. Copies are available at <http://www.dodig.mil>. For questions about this report, contact Mr John Perryman, Director of Oversight, john.perryman@dodig.mil.

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Acronyms

CO	Commanding Officer
CMG	Case Management Group
IA	Investigative Action Report
NCIS	Naval Criminal Investigative Service
OIC	Officer-In-Charge
PDUSD(P&R)	Principal Deputy Under Secretary of Defense (Personnel and Readiness)
ROI	Report of Investigation
SAPR	Sexual Assault Prevention and Response
SARC	Sexual Assault Response Coordinator
UCMJ	Uniform Code of Military Justice
UVA	Uniformed Victim Advocate
VA	Victim Advocate



INSPECTOR GENERAL
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OCT 18 2011

MEMORANDUM FOR SECRETARY OF THE NAVY

SUBJECT: Review of Matters Related to the Sexual Assault of Lance Corporal Maria Lauterbach, U.S. Marine Corps," (Report No. DoDIG-2012-003)

This final report is provided for your review and comment.

The Principal Under Secretary of Defense for Personnel and Readiness requested we review command and other responses to the rape complaint of Lance Corporal (LCpl) Maria Lauterbach, assigned to Combat Logistics Regiment 27, 2^d Marine Logistics Group, II Marine Expeditionary Force, Camp Lejeune, N.C.

We found that the Naval Criminal Investigative Command (NCIS) failed to conduct the criminal investigation into LCpl Lauterbach's rape complaint in accordance with DoD, Department of Navy (DoN), and NCIS standards; the Sexual Assault Prevention and Response Program had lapses in responding to LCpl Lauterbach's rape complaint, and overall, command officials at the Combat Logistics Regiment 27 also had lapses in responding to LCpl Lauterbach's sexual assault complaint.

We considered management comments on a draft of this report when preparing the final report. The DoN comments conformed to the requirements of DoD Directive 7650.3; therefore, additional comments are not required.

We appreciate the courtesies extended to the review staff. For additional information on this report, please contact me or Mr. John Perryman, Director of Oversight, (703) 604-8765.

A handwritten signature in black ink, appearing to read "R. R. Stone", is positioned above the typed name of the Deputy Inspector General.

Randolph R. Stone, SES
Deputy Inspector General
Policy and Oversight

TABLE OF CONTENTS

I. INTRODUCTION AND SUMMARY	1
II. BACKGROUND	2
III. SCOPE.....	3
IV. FINDINGS AND ANALYSIS	4
1. Did Responsible Officials Comply with Applicable Requirements in Responding to LCpl Lauterbach’s Sexual Assault Complaint?.....	4
a. NCIS Investigation	4
Standards	4
Facts	4
Discussion	6
b. Sexual Assault Response Program Officials	12
Standards	13
Facts	13
Discussion	
c. Command Officials	17
Standards	18
Facts	18
Discussion	20
2. Did Responsible Officials Respond Adequately to Events Following the Sexual Assault Complaint to Ensure LCpl Lauterbach’s Safety and Well- Being?.....	21
Standards.....	21
Facts.....	21
Discussion.....	22
V. CONCLUSIONS.	22
VI. RECOMMENDATIONS.....	23
VII. MANAGEMENT COMMENTS.....	23
Appendix A. Significant Investigative Events.....	26
Appendix B. Standards.....	31
Appendix C. Management Comments.....	46

REVIEW OF MATTERS RELATED TO THE SEXUAL ASSAULT OF LANCE CORPORAL MARIA LAUTERBACH, U.S. MARINE CORPS

I. INTRODUCTION AND SUMMARY

This report responds to an August 7, 2008, request from the Principal Deputy Under Secretary of Defense (Personnel and Readiness) (PDUSD (P&R)). The PDUSD (P&R) requested we review command and other responses to the rape complaint of Lance Corporal (LCpl) Maria Lauterbach, assigned to Combat Logistics Regiment 27, 2^d Marine Logistics Group, II Marine Expeditionary Force, (II MEF) Camp Lejeune, N.C. We focused on the following specific questions:

- Did responsible officials comply with requirements in responding to LCpl Lauterbach's sexual assault complaint?
- Did responsible officials respond adequately to events following the sexual assault complaint to ensure LCpl Lauterbach's safety and well-being?

We reviewed the facts and circumstances involved in responses to the rape complaint and the Naval Criminal Investigative Service (NCIS) rape investigation, and coordinated with the Onslow County, N.C., Sheriff's Office, and the District Attorney's Office for that jurisdiction. We also interviewed Marines, Camp Lejeune Sexual Assault Prevention and Response Program (SAPR) personnel, command officials, civilian police officers and prosecutors, NCIS agents and supervisors, and others with knowledge about this matter.

We found NCIS failed to conduct the criminal investigation into LCpl Lauterbach's rape complaint in accordance with DoD, DoN and NCIS standards. Overall, the NCIS investigation was not thorough, was not conducted in a timely manner, and logical investigative steps were not completed. Witness interviews were not thorough and in some instances not conducted, the accused's alibis for the dates LCpl Lauterbach reported the sexual assault occurred were not investigated, and the reported crime scenes were not examined. Although both Headquarters and local NCIS senior leaders were aware of deficiencies with the rape investigation, they took no corrective action in regard to the investigative failures.

We also found the Sexual Assault Prevention and Response Program (SAPR) response to LCpl Lauterbach's rape complaint was inadequate. LCpl Lauterbach's rape incident information was not entered into the Sexual Assault Incident Reporting Database until 6 months after her rape complaint, the Camp Lejeune installation Sexual Assault Case Management Group did not function in accordance with policy, and the 2d Marine Logistics Group Command Sexual Assault Response Coordinator did not actively participate in the Sexual Assault Case Management Group meetings.

We concluded overall, command officials at the Combat Logistics Regiment 27 responded inadequately to LCpl Lauterbach's sexual assault complaint. They assigned a Uniformed Victim Advocate (UVA), implemented Military Protection Orders (MPO), ensured NCIS was notified, and ensured LCpl Lauterbach sought medical attention. They did not, however, remain engaged

with LCpl Lauterbach and monitor her well-being throughout the sexual assault investigative process.

We recommend the Secretary of the Navy take corrective action, as necessary, with respect to officials whom we identified as accountable for the regulatory violations and procedural deficiencies described in this review.

This report sets forth our findings and conclusions.

II. BACKGROUND

On May 11, 2007, LCpl Lauterbach told her Officer-in-Charge (OIC) that Corporal Cesar Laurean, a senior marine in her immediate chain of command, had raped her on two occasions. According to the report, the first incident occurred in late March 2007, while Laurean was the Duty Noncommissioned Officer assigned at her barracks, and the second occurred approximately 2 weeks later. The unit Duty Logbook showed Laurean was the assigned duty officer at LCpl Lauterbach's barracks during the evening on March 25-26, 2007. Based on the complaint, the second event would have occurred about 2 weeks later, on or about April 9, 2007. Laurean (generally referred to as "the accused" in this report) was never charged in connection with the rape report, but was subsequently charged and convicted of murdering LCpl Lauterbach and sentenced to life in prison.

Key events in the case are summarized below and detailed in Appendix A.

May 11, 2007. Upon receiving the sexual assault complaint, the OIC assigned a UVA who explained the sexual assault and victim advocate programs to LCpl Lauterbach and accompanied her initially to the Marine Corps Criminal Investigations Division and then to the local NCIS office where she was interviewed. The UVA also accompanied LCpl Lauterbach to the installation Family Counseling Center to obtain counseling services. The OIC ordered the accused to cease contact with LCpl Lauterbach.

May 18, 2007. NCIS re-interviewed LCpl Lauterbach and interviewed the accused.

May 24, 2007. The Regimental Commander issued a written Military Protection Order (MPO) directing the accused to stay at least 1,000 feet away from LCpl Lauterbach. Three additional MPOs were issued to the accused through January 2008, and the command authorized LCpl Lauterbach to not attend various unit formations and functions if there was a chance the accused would attend. No one reported a MPO violation.

June 27, 2007. A troop medical clinic examination determined LCpl Lauterbach was pregnant. She went to NCIS for another interview and said the pregnancy resulted from the accused raping her.

October 18, 2007. NCIS sent an interim Report of Investigation (ROI) to command and legal officials. The Trial Counsel received the interim ROI, and after reviewing it, asked

NCIS for additional investigative work. Additionally, the Trial Counsel began interviews to gather evidence for an Article 32 hearing.¹

November 27, 2007. LCpl Lauterbach told the Trial Counsel she no longer believed the accused was her unborn child's father, citing a miscalculation in the baby's due date. The Trial Counsel and chain of command continued plans for an Article 32 hearing.

December 14, 2007. The unit held its annual Christmas party but LCpl Lauterbach did not attend. She was last seen at approximately 3:00 p.m.

December 17, 2007. LCpl Lauterbach did not report for duty on the Monday following the Friday Christmas party, and her command listed her status as "unauthorized absence."

January 9, 2008. NCIS received information concerning LCpl Lauterbach from the Onslow County, NC, Sheriff's office and initiated a missing person investigation. The Onslow County Sheriff's office informed NCIS about various factors, including: an unidentified male had made an automated teller machine withdrawal from LCpl Lauterbach's bank account; an unused bus ticket had been purchased in LCpl Lauterbach's name; LCpl Lauterbach's cell phone had been found on the highway; and LCpl Lauterbach's car had been located at a Greyhound bus station.

January 12, 2008. LCpl Lauterbach's remains were found buried in a shallow grave at the accused's off-base residence in Jacksonville, NC. The state of North Carolina subsequently charged the accused with the murder, and he fled to Mexico.

August 24, 2010. After extradition from Mexico and a civilian trial in North Carolina, the accused was convicted of murdering LCpl Lauterbach, as well as theft and fraud related to using her automated teller machine card.

We initiated our review in September 2008. However, in November 2008, North Carolina prosecutorial and law enforcement officials requested we suspend our fieldwork until they completed the criminal trial process. We re-started our review in September 2010.

III. SCOPE AND METHODOLOGY

Our review focused on whether responsible officials, including the chain of command, criminal investigators, victim advocates, victim and witness program representatives, and SAPR officials, complied with DoD, Navy, and Marine Corps requirements in responding to LCpl Lauterbach's sexual assault complaint. Additionally, we assessed their actions following the sexual assault complaint to determine whether they satisfied requirements to protect LCpl Lauterbach's safety and well-being.

¹ The Uniform Code of Military Justice (UCMJ) (10 U.S.C. 801, et seq.) prescribes different legal venues for dealing with military infractions, depending on the severity. General courts-martial are prescribed for the most serious infractions. UCMJ Article 32, Investigation, (10 U.S.C.), Section VII ("Trial Procedure"), provides "... no charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made." The investigation is conducted as an Article 32 hearing, which is similar to a preliminary hearing in civilian law, to determine whether sufficient evidence exists to warrant court-martial.

We interviewed 55 witnesses, including NCIS special agents and supervisors, LCpl Lauterbach's chain of command and fellow Marines, Camp Lejeune SAPR and mental health officials, installation and unit victim advocates, and other witnesses. We also interviewed Mrs. Mary Lauterbach, the victim's mother. We attempted to interview the accused but coordination efforts with his appellate attorney were unsuccessful. In addition, we reviewed the NCIS and Onslow County, NC, investigation files, as well as relevant e-mail messages and other documents related to the NCIS investigation. Finally, we reviewed and assessed compliance with DoD, Navy and Marine Corps policies and requirements. The policies and requirements are listed in Appendix B.

IV. FINDINGS AND ANALYSIS

1. Did Responsible Officials Comply with Requirements in Responding to LCpl Lauterbach's Sexual Assault Complaint?

a. NCIS Investigation

We examined the NCIS investigation, analyzed it against standards, and identified both substantive and procedural deficiencies. We found the NCIS case agent and supervisory agents did not conduct the criminal investigation diligently, timely, or completely and logical investigative steps were not completed. We describe significant deficiencies below.

Standards

Policy and requirements are listed in Appendix B. Individual requirements are cited and discussed throughout this section.

Facts

On May 11, 2007, LCpl Maria Lauterbach's friends told her OIC that LCpl Lauterbach said she had been sexually assaulted. The OIC talked to LCpl Lauterbach and immediately assigned a UVA to assist LCpl Lauterbach. The UVA and LCpl Lauterbach then went to the Marine Corps Criminal Investigation Division to report the sexual assault. After hearing the complaint, the Marine Corps Criminal Investigation Division investigator notified a supervisory agent at NCIS Camp Lejeune, NC, that LCpl Lauterbach had reported being sexually assaulted on two occasions, and had accused an individual. The supervisory agent assumed investigative jurisdiction for the complaint and assigned a case agent to investigate. The same day, the UVA accompanied LCpl Lauterbach to the NCIS office for an interview.

LCpl Lauterbach told the case agent she and the accused had sexual intercourse on two occasions. According to her prepared statement, she said she did not want to have sexual intercourse with the accused and felt she had been raped. LCpl Lauterbach said the first incident occurred in her barracks room one night in late March 2007, while the accused was assigned as the duty officer for the barracks, and the second incident occurred approximately 2 weeks later in the OIC's private office bathroom at the Group Consolidated Administration Center where both LCpl Lauterbach and the accused worked. Subsequent to the interview, the case agent prepared a typed, sworn statement, but LCpl Lauterbach did not sign it that day.

On May 11, 2007, the case agent also interviewed the OIC, who furnished background information on both LCpl Lauterbach and the accused, and named other individuals with possible knowledge about the rape complaint. A week later, on May 18, 2007, the case agent re-interviewed LCpl Lauterbach, incorporated information from that interview into the May 11, 2007, interview statement, and had her sign the statement.

On May 18, 2007, the case agent also interviewed the accused. The accused denied any sexual contact with LCpl Lauterbach and agreed to take a polygraph examination. He also presented two alibis covering the approximate times when LCpl Lauterbach said he raped her, and named other witnesses with possible knowledge of the complaint. He declined to sign a written statement, but told the case agent he would complete one on his own and provide it to NCIS at another time. When contacted on May 22, 2007, the accused told the case agent he had sought counsel. The accused said his counsel told him not to provide a statement, submit to polygraph examination, or participate in further interviews.

In mid-May 2007, LCpl Lauterbach's UVA telephoned the case agent reporting damage to LCpl Lauterbach's automobile. The UVA said the vehicle was "keyed," leaving scratches. According to the UVA, the case agent told her "vandalism. . . did not rise to the level of an NCIS investigation" and advised her to report the incident to the Provost Marshal's Office, if LCpl Lauterbach needed a report for her insurance company. The case agent did not pursue the incident separately or in connection with the rape complaints.

About 2 weeks later, on May 31, 2007, the UVA again telephoned the case agent reporting someone had punched LCpl Lauterbach in the face. The UVA told the case agent LCpl Lauterbach came to her office with bruises on her face and said someone punched her while in the parking lot outside her barracks. The case agent interviewed LCpl Lauterbach. She said an unknown assailant who had called her by her first name before the assault, had punched her in the face causing bruising and swelling to her left jaw.

LCpl Lauterbach described the assailant and named a person (not the accused) who she said fit the description. She also identified a witness who she had told about the assault the day it occurred, and another witness she had told about the assault the following day. Following the interview, the case agent sketched and photographed the parking lot. The case agent did not investigate the physical assault complaint further, and did not investigate the sexual assault complaint further until June 27, 2007, about a month later.

On June 27, 2007, LCpl Lauterbach told the case agent she was pregnant. The case agent had her provide another statement. In her statement, LCpl Lauterbach acknowledged having consensual sex with her boyfriend 4-5 weeks after her sexual assault complaint, but thought the accused fathered the baby during the rapes she reported.

No further investigative activity occurred until December 7, 2007, after the Trial Counsel requested that the case agent conduct additional investigative activity in preparation for the Article 32 hearing.

A more detailed summary of investigative activity is at Appendix A.

Discussion

The case agent and supervisory agents did not comply with NCIS criminal investigation requirements. We identified various deficiencies, as described below.

Witness Interviews. The NCIS Investigative Manual² requires investigators to interview the victim and any witness to establish whether a sexual assault occurred. For approximately 5 months after receiving the complaint, the case agent interviewed two witnesses, but not the six additional witnesses whom LCpl Lauterbach, the OIC, and the accused had identified as persons with possible relevant information.

On May 11, 2007, the case agent interviewed LCpl Lauterbach and subsequently prepared a written interview statement. The statement omitted pertinent information LCpl Lauterbach provided such as the suspect's actions prior to the sexual assault, as well as witnesses LCpl Lauterbach named as possibly having knowledge about the incidents. Specifically, the statement did not include the following information that was included in the case agent's interview notes:

. . . Cpl. . . (name redacted) - friend of hers, knows about the rape". "PFC (name redacted). . . mentioned Cpl (the accused) made advances to another female Marine in GCAC. Not sure but might be. . . (sp?) works in deployed admin". Other names: PFC (name redacted). . . and Sgt (name redacted). . .

During interviews the case agent conducted on May 11, 2007; May 18, 2007, May 31, 2007; and June 27, 2007, the interviewees identified eight witnesses with possible knowledge or relevant information. The case agent completed one witness interview on June 27, 2007, two witness interviews on December 7, 2007, one witness interview on January 16, 2008, and one witness interview on May 13, 2008 (5 total), and never interviewed the remaining 3 potential witnesses.

During our interview, the case agent told us she could not explain why some witness interviews took months and others were never conducted. She admitted she "could have done a better job" investigating the case, but said she did not believe her actions contributed to LCpl Lauterbach's death. Whatever the reason, not conducting witness interviews, especially in a violent crime investigation was an investigative deficiency that could have degraded the ability to resolve the complaint.

Crime Scene Investigation. The NCIS Investigative Manual requires a crime scene examination, without regard to whether the crime is reported immediately or after-the-fact. A crime scene examination includes visiting, sketching and photographing the scene, and canvassing the area to identify and interview possible witnesses. If a crime scene examination is not conducted, the investigator must document the reason in the ROI. In this case, the case agent did not perform a crime scene investigation at either location where the sexual assaults

² NCIS investigative policy is contained in two manuals - NCIS-1, "Manual for Administration" and NCIS-3, "Manual for Investigations." For simplicity, we refer to the NCIS Investigative Manual or NCIS investigative policy generally when referring to requirements in either manual.

reportedly occurred, and did not document a reason for either omission in the ROI. On interview, the case agent could not explain the deficiencies. Whatever the reason, the investigative deficiency could have degraded the ability to resolve a violent crime complaint.

Alibi Investigation. The NCIS Investigative Manual requires the agent “test the validity of a suspect's alibi,” investigating as necessary to corroborate or refute the alibi. In this case, the case agent did not pursue investigative leads to corroborate or refute the accused’s alibi claims. In fact, the case agent did not even obtain details related to his alibis.

LCpl Lauterbach said the first sexual assault occurred sometime in March in her barracks room in Building HP 308, while the accused was the assigned “Duty Non-Commissioned Officer (duty officer).”³ During interrogation on May 18, 2007, the accused told the case agent he was not present at the barracks when the incident reportedly occurred. He said he went home the night he was supposedly on duty in March 2007, and had no contact with LCpl Lauterbach.

Based on the unit duty roster, the accused was scheduled as duty officer at LCpl Lauterbach’s barracks during the evening on March 25-26, 2007.⁴ Based on entries in the Duty Logbook⁵ for the barracks, someone recorded the initials “CAL” (the accused’s initials) in the logbook when reporting for duty at 11:55 p.m. on March 26, 2007, an additional 30 times during the night when security patrols were completed, and upon being relieved from duty at 7:30 a.m. on March 27, 2007. In addition, during this time, the accused was in contact with at least two individuals, the person he relieved upon reporting for duty and the person who relieved him the following morning. In addition, the “Assistant Duty Non-Commissioned Officer was on duty at the location, within the same timeframe and initialed the same logbook.” All three people’s names and ranks were identified in the logbook.

The case agent did not interview anyone at the accused’s duty station to determine whether he was there when LCpl Lauterbach reported she was raped. In addition, the case agent did not have an explanation for not interviewing alibi witnesses. Further, she waited 7 months after LCPL Lauterbach reported the sexual assault to retrieve the duty log records for review, and then only at the Trial Counsel’s request.

Based on determining when the accused was on duty at LCpl Lauterbach’s barracks and her report as to when the second sexual assault occurred (2 weeks later), we determined the second sexual assault occurred on or about April 9, 2007. During the NCIS interrogation on May 18, 2007, the accused told the case agent he was on emergency leave for a week beginning approximately April 7, 2007. However, according to his leave and earning statements, the accused was on emergency leave from April 30, 2007, to May 5, 2007, well after the date the

³ A Non-Commissioned Officer assigned to duty in charge of a security watch.

⁴ Although the duty roster shows the accused was scheduled for duty on March 25, 2007, the duty logs show he actually performed duty March 26-27, 2007.

⁵ A chronological log maintained to ensure an accurate record of a period of time during which an individual is assigned specific, detailed responsibilities on a recurring basis and used to record circumstance of importance or interest.

second rape was reported to have occurred. The case agent never reviewed the accused's leave records to validate the alibi and did not have an explanation for not doing so. These omissions were contrary to NCIS policy.

Interview/Interrogation Documentation. The NCIS Investigative Manual requires "oral statements of witnesses, including victims, or of an accused should be reduced to writing immediately after the interview or interrogation." According to the policy, whenever credible information is developed that could be used in an administrative or judicial hearing, upon concluding the interview, the individual should be asked to furnish a written statement, preferably under oath. When a victim, witness, or suspect provides information, but not a written statement, the policy requires documenting the information in a report, detailing the information received, the "rights" notification given the individual, and why a written statement was not executed. The policy also requires NCIS investigations to comply with the President's Council on Integrity and Efficiency/Executive Council on Integrity and Efficiency Quality Standards for Investigations, which require documenting investigative activities accurately and completely.

The case agent told us she interviewed LCpl Lauterbach on May 11, 2007, and May 18, 2007. However, the case agent did not complete an interview statement, notes, log entries, report, or anything else detailing the May 18 interview. According to the case agent, the May 18 interview involved follow-up questions concerning a November 2006 incident in which LCpl Lauterbach was allegedly involved in misconduct, but the incident did not concern the sexual assault report. She also said she combined all the information from the May 11 and 18 interviews in the statement she prepared for the May 11, 2007, interview, but did not otherwise document the May 18 information in her case file. She had LCpl Lauterbach sign the statement as if all the information had been obtained on May 11, 2007. LCpl Lauterbach signed that statement on May 18. Both NCIS policy and the Quality Standards for Investigations required the case agent to prepare individual statements documenting the individual interviews accurately reflecting when the investigator obtained the information.

The case agent also interviewed LCpl Lauterbach's OIC, who was also the accused's OIC, regarding LCpl Lauterbach's rape complaint. The interview occurred on May 11, 2007. The case agent's interview report prepared based on the interview contained only information about a previous incident in which LCpl Lauterbach was accused of misconduct. Information regarding what the OIC knew about LCpl Lauterbach's rape complaint, and information about the accused and possible witness names were omitted. Also omitted was information the OIC relayed about the OIC's bathroom where LCpl Lauterbach said the second rape occurred. The case agent told us she asked the OIC about the bathroom, but excluded the information from her report. She could not explain why she omitted such information from the interview report.

Interview/Interrogation Thoroughness. The NCIS Investigative Manual requires agents to "... gather as much information as they can about the case before interviewing the victim. The agents should contact personnel involved thus far in the investigation such as base police and emergency response/medical personnel." In this case, however, the case agent did not contact the base police personnel involved to gather information before interviewing LCpl Lauterbach. In fact, although provided the name and notes indicating an involvement in the case, the case

agent did not interview the Marine Corps Criminal Investigation Division agent who received the sexual assault complaint initially either before or after interviewing LCpl Lauterbach.

Property Damage. Secretary of the Navy Instruction (SECNAVINST) 5430.107, “Mission and Functions of the Naval Criminal Investigative Service,” December 28, 2005, gives NCIS discretion to decline a case for investigation. However, “. . . [i]f this occurs, NCIS shall expeditiously inform the affected command or activity.”

In mid-May 2007, LCpl Lauterbach’s UVA telephoned the case agent reporting LCpl Lauterbach’s automobile had been damaged—“keyed,” leaving scratches. According to the UVA, the case agent told her “vandalism. . . did not rise to the level of an NCIS investigation” and advised her to report the incident to the Provost Marshal’s Office, if LCpl Lauterbach needed a report for her insurance company.

Although required to do so, the case agent did not inform LCpl Lauterbach’s command NCIS was not investigating the incident. In fact, she never interviewed LCpl Lauterbach about the complaint, and told us she never saw a connection between the auto damage and rape complaint. About 18 months later, on November 18, 2008, she prepared and included a report addressing the damage report in the rape investigation file, but only after her then supervisory agent directed the inclusion.

Physical Assault Complaint. The NCIS Investigative Manual requires agents interview and take statements from witnesses, neighbors, persons first on the scene, and other persons in the vicinity of the assault. Additionally, they must promptly notify the affected commanders of any information or aspect of investigative activities indicating an actual or suspected threat to people.

On May 31, 2007, LCpl Lauterbach’s UVA told the case agent LCpl Lauterbach came to her office with bruises on her face and said an unknown assailant punched her in the face the previous night. LCpl Lauterbach said the incident happened in the parking lot as she returned to her barracks. The UVA told us she immediately reported the incident to the case agent the same day. According to the case agent’s notes, she interviewed LCpl Lauterbach the same day she received the report. In her interview, LCpl Lauterbach described the assailant and named a person she said fit the description.

Although the case agent took LCpl Lauterbach’s statement and visited the location where the incident reportedly occurred, she did not interview the person LCpl Lauterbach identified as resembling the assailant, did not report the incident to LCpl Lauterbach’s commanders, did not report the assailant’s description to base police/security or local law enforcement agencies.

The case agent told us she did not interview the accused because LCpl Lauterbach said she would have recognized the accused’s voice, but did not recognize the assailant’s voice. Investigative thoroughness required the interview and additional investigative steps as necessary to establish the accused’s whereabouts at the time, either eliminating him as a suspect or determining if additional investigative steps were needed. The same investigative activity was necessary to resolve the information concerning the person LCpl Lauterbach thought resembled the assailant.

We asked the case agent if LCpl Lauterbach had visible injuries when she interviewed her. The case agent told us she could not confirm LCpl Lauterbach's injuries. The UVA told us she saw bruises on LCpl Lauterbach's face and was present during the May 31 interview when LCpl Lauterbach brought the injury to the case agent's attention. LCpl Lauterbach named two witnesses whom she said saw her shortly after the assault, and who should have been able to verify her injuries. The case agent did not interview those witnesses.

Additionally, the case agent did not obtain witness statements or complete an investigative activity report within 5 business days as required. In fact, the case agent did not report the physical assault or any investigative activity related to the report for approximately 18 months (November 18, 2008). She told us that in November 2008, her supervisor directed her to complete an investigative activity report regarding the assault and to incorporate it into the sexual assault investigation.

Investigative Timeliness. The NCIS Investigative Manual requires completing and reporting all investigations as expeditiously as possible. The manual also requires "due diligence" and timeliness in conducting and reporting investigations, providing "this is especially critical given the impact investigations have on the lives of individuals and activities of organizations." The policy provides "[i]f the time of the offense cannot be fixed through questioning of the victim, witnesses and suspect(s), the approximate time should be determined through circumstantial evidence."

In LCpl Lauterbach's case, the case agent did not meet timeliness requirements in the rape, physical assault, or vehicle damage complaints. The UVA reported the vehicle damage to the case agent in "mid-May," about 1 week after the sexual assault complaint. The UVA reported the punching assault to the case agent on May 31, 2007, about 3 weeks after the sexual assault complaint. The case agent did not prepare a report on either incident until November 18, 2008, about 18 months after the incidents were reported.

The case agent told us she never connected the vehicle damage and physical assault complaints to the rape investigation, but in November 2008, a supervisor told her to document the complaints in the rape investigation. When interviewed, the supervisor did not recall such a directive to the case agent.

ROI Completeness and Timeliness. The NCIS Investigative Manual requires the case agent enter investigative data in NCIS reporting systems, from investigation initiation through closure, and ensure complete and accurate data. Serious crimes (including rape complaints) are a "Priority II" category, requiring opening an investigation and entering the data in NCIS reporting systems within 3 business days after receiving credible information leading to the investigation. An interim ROI is required within 60 calendar days after opening the investigation. After opening the investigation, the NCIS process includes the following steps:

- The assigned case agent generates a "ROI (OPEN)" report and sends it electronically to the supervisory agent for approval.

- After approval, the supervisory agent forwards the “ROI (OPEN)” to NCIS management documenting the investigation has been received, accepted, and is ongoing—a “ROI (OPEN)” is used for internal NCIS tracking and notification; a “ROI (INTERIM)” is used to report investigative findings and developments to external organizations, e.g. chain of command and legal officials.

We examined the ROI events and sequences involved in LCpl Lauterbach’s sexual assault complaint. We found no evidence the case agent generated a “ROI (OPEN)” and sent it electronically to the supervisory agent for approval within 3 business days as required. In addition, the supervisory agent did not forward a “ROI (OPEN)” to NCIS management as required. The case agent told us she reminded her supervisor numerous times to forward the report to NCIS management, but he did not. Her supervisor generally agreed, advising that he did not comply with NCIS administrative requirements in this instance. A new supervisory agent discovered the error and forwarded the report to NCIS management about 5 months later on October 15, 2007. (Individual investigative activities are described in Appendix A.)

Although required, the case and supervisory agents also did not forward a “ROI (INTERIM)” to the responsible commander and supporting legal advisor within 60 calendar days to notify them about the ongoing NCIS criminal investigation. As a result, those officials never received the official NCIS notification and did not have a written record for tracking investigations within their responsibility. The omission also precluded the legal advisor from assisting with the investigative strategy initially and preparing for possible prosecution.

For all practical purposes, LCpl Lauterbach’s rape complaint remained idle for almost 7 months between May 18, 2007, and December 2007. After reviewing the NCIS interim report (dated October 18, 2007), the Trial Counsel requested additional investigative activity, such as verifying the accused’s alibis. The case agent began that investigative work in December 2007.

Based on our review, although the NCIS policy was clear, the agents involved in the investigation did not ensure the sexual assault complaint was processed and reported completely and timely. Opening and interim reports were not prepared and distributed as required. As a result, required notifications to NCIS management and command officials took approximately 5 months.

Supervisory Case File Review. The NCIS Investigative Manual required the supervisory agent to review the investigative case files for quality every 30 days. In addition, policy required the supervisory agent to document the review on a preprinted review sheet or on bond paper, and include the document in the investigative file. The supervisory agent was also required to record his name and review date, together with any specific guidance for the case agent, in the case file’s “Case Activity Record.”

The supervisory agent initially told us he reviewed all the case agent’s files including LCpl Lauterbach’s complaint every 30 days as required. The supervisory agent later changed his testimony based on our questioning. He told us he had periodic sessions with the case agent in which he reviewed her assigned cases, as reflected in the NCIS electronic management system. Although acknowledging LCpl Lauterbach’s investigation was not included in the electronic

system, he told us at the end of each case review session, he asked the case agent if she had any additional cases not appearing in her case control printout, and she always told him she did not have additional cases.

The supervisory agent said he never discussed LCpl Lauterbach's case with the case agent (although he initially received the complaint and assigned it to her), because it was not included in the automated NCIS management system and the case agent never told him she was investigating the case. The case agent, however, said she discussed LCpl Lauterbach's case with the supervisory agent a number of times and documented the discussions in emails and personal notes, but not in the case file.

Victim Witness Assistance Program Information. Both DoD and NCIS policy required NCIS agents, upon initiating the criminal investigation, to give LCpl Lauterbach a pamphlet (DD Form 2701) outlining her rights, as well as NCIS contact information for her to use in inquiring about the investigation. We found NCIS did not comply with these requirements. The case agent did not give LCpl Lauterbach the required pamphlet.

Case Status Updates. The NCIS Investigative Manual required NCIS representatives to give both LCpl Lauterbach, and her command representatives monthly case status updates throughout the criminal investigation. We did not find any instance in which the case agent or any other NCIS representative provided monthly updates to either LCpl Lauterbach or command representatives. In the October 18, 2007, interim ROI, the case agent reported giving LCpl Lauterbach's OIC a case status update on May 18, 2007. We could not validate this information. The OIC told us the case agent interviewed her on May 11, 2007, regarding LCpl Lauterbach but she never received a case status update because she never talked with the case agent again after the initial interview. The case agent could not explain why she did not provide monthly case status updates.

Corrective Action. Former NCIS leaders, Mr. Thomas Betro, the NCIS Director, and the local NCIS office Special-Agent-In-Charge, were aware there were deficiencies in the rape investigation before our review began in September 2008. During an interview in April 2011, Mr. Betro told us he believed local NCIS supervisors had taken appropriate corrective measures regarding personnel responsible for the deficiencies. We were unable to verify local NCIS leaders took any action.

b. Sexual Assault Response Program Officials

LCpl Lauterbach was assigned a UVA and a civilian Victim Advocate (VA) the same day she reported being sexually assaulted. These victim advocates generally complied with governing requirements, including completing a VA Sexual Assault Response Protocol Checklist and a VA Job Description checklist.

We determined that except for two procedural steps, the victim advocates complied with requirements. However, we also determined the Command and Installation Sexual Assault Response Coordinators (SARC) did not comply with DoD, Navy, and Marine Corps guidance regarding LCpl Lauterbach's sexual assault complaint.

Standards

The applicable standards are from DoD Directive (DoDD) 6495.01, “Sexual Assault Prevention and Response Program,” October 6, 2005; DoD Instruction (DoDI) 6495.02, “Sexual Assault Prevention and Response Program,” Operational Navy Instruction (OPNAVINST) 1752.1B, “The Sexual Assault Victim Intervention (SAVI) Program,” December 29, 2006; and Marine Corps Order (MCO) 1752.5, “Sexual Assault Prevention and Response Program,” February 05, 2008. Other relevant policy and requirement documents are listed in Appendix B. These documents include various checklists that outline specific duties for UVAs and VAs. Individual requirements are cited and discussed below.

Facts

UVA and VA. UVAs and VAs are responsible for facilitating care for complainants under the Sexual Assault Prevention and Response (SAPR) program. Both DoD and Marine Corps policy include checklists to provide specific guidance regarding their roles and responsibilities in assisting people who report sexual assaults.

After reporting a sexual assault to her OIC on May 11, 2007, LCpl Lauterbach was assigned a UVA trained in sexual assault and victim advocacy programs. According to the UVA, she explained the programs to LCpl Lauterbach, including her report was “unrestricted”⁶ because she had reported the sexual assault to her OIC, and law enforcement would investigate the complaint. The UVA then escorted LCpl Lauterbach to law enforcement.

The UVA later took LCpl Lauterbach to the Marine and Family Services, Marine Corps Community Services, Family Counseling Center to assist in obtaining counseling services she requested. LCpl Lauterbach also met with a civilian VA (USMC employee) and was again briefed on the victim advocacy program. LCpl Lauterbach asked to retain her UVA instead of being assigned a civilian VA. The chain of command, in coordination with SAPR personnel at Camp Lejeune, approved this arrangement.⁷ The UVA coordinated with LCpl Lauterbach’s chain of command to have her reassigned to the same duty section as the UVA. The civilian VA assisted LCpl Lauterbach with scheduling an appointment to see a mental health clinician on May 14, 2007, but otherwise was not involved in the case.

Later in May 2007, LCpl Lauterbach told her UVA someone had damaged her car. That same day, the UVA telephonically reported the damage to the NCIS case agent and contacted the Command SARC and briefed him about the incident. The UVA told us that a couple of weeks after reporting the sexual assault, LCpl Lauterbach also told her someone had punched her in the face. The day the UVA received this information, she again contacted both the NCIS case agent and the Command SARC. The UVA said she told the Command SARC she was concerned

⁶ Per DoD Directive 6495.01, unrestricted reporting allows an individual to report the details of his/her sexual assault and receive medical treatment, counseling, and advocacy services, but the report triggers the official investigative process.

⁷ According to SAPR program personnel, common practice was to assign VAs to sexual assault victims. UVAs were used primarily when military members deployed.

about the two incidents, and felt they may have resulted from LCpl Lauterbach's sexual assault report.

The UVA told us that from May 11, 2007, until early September 2007, she had daily contact with LCpl Lauterbach during the work week. She also stated that after moving to a new duty location in September, she continued to meet with LCpl Lauterbach as needed.

However, the uniformed or civilian VA did not comply with the following procedural steps:

- Enter incident data in the Sexual Assault Incident Reporting Database (SAIRD) in a timely manner, as required.
- Attend the monthly Sexual Assault Case Management Group (CMG) meetings as required.

SAIRD is a central repository for sexual assault incident-based data maintained to enhance DoD and Service capabilities, to analyze trends and respond to requests for data relating to sexually based incidents. SAIRD contains information such as date of assault; victim information; allegation; victim intervention; victim preferences; offender information; and disposition of allegations.

When a sexual assault is reported at a Marine Corps installation with a Marine and Family Services office, the civilian VA is required to enter the assault information into SAIRD within 30 days. Since Camp Lejeune had a Marine and Family Services Counseling Center, the UVA did not have access to SAIRD and the civilian VA was responsible for the data entry. According to guidance, the civilian VA should have inputted LCpl Lauterbach's sexual assault information into SAIRD not later than June 11, 2007. Our review of the SAIRD central database tracking data revealed the civilian VA did not input LCpl Lauterbach's sexual assault data into the SAIRD database until November 23, 2007.

We asked the civilian VA why she did not enter LCpl Lauterbach's data until 6 months after her sexual assault report. The Civilian VA said she realized it was her responsibility to input LCpl Lauterbach's data into SAIRD, and could not explain the delay or what triggered her to enter the data in November.

DoD, and Navy sexual assault policy required each installation to have a Sexual Assault CMG. The group is chaired by the Installation Sexual Assault Response Coordinator (SARC) and is required to meet monthly to review sexual assault cases. DoD Instruction (DoDI) 6495.02, "Sexual Assault Prevention and Response Program," states "CMG members shall consider and implement short and long term measures to help facilitate and assure victims' well-being and recovery from the sexual assault." CMG members include victim advocates for each ongoing case, SARCs, NCIS representatives, medical personnel, mental health counselors, Staff Judge Advocates, and the victims' commanders.

DoD and Marine Corps sexual assault checklists require the UVA or VA to serve as a CMG member and attend all group meetings involving their victims' cases. We reviewed minutes from the Camp Lejeune CMG meetings in August and October through December 2007, (no minutes

were available before August 2007 or for the September 2007 meeting). Based on our review and witness testimony, neither advocate assigned to LCpl Lauterbach's case attended the monthly CMG meetings. When asked why they never attended the CMG meetings, the UVA said she was never invited. The civilian VA could not recall why she never attended.

Discussion

Marine Corps SAIRD user policy requires a UVA or VA who responds to a sexual assault to input sexual assault incident data into SAIRD in a timely manner (30 days). In LCpl Lauterbach's case, the civilian VA was responsible for inputting the data. However, LCpl Lauterbach's sexual assault data was not input into SAIRD until 6 months after her sexual assault report. We think entering LCpl Lauterbach's data into SAIRD was an important step because it alerts the Installation SARC to a new sexual assault case. The Installation SARC told us he routinely queried SAIRD to obtain current sexual assault case listings before conducting the monthly sexual assault CMG meetings. He told us he used the lists to ensure requisite members were invited to attend and represent victim cases.

We concluded that because LCpl Lauterbach's information was not in SAIRD, and her UVA or civilian VA did not attend monthly sexual assault case management meetings, LCpl Lauterbach's case received no visibility at the CMG. Therefore, case management group professionals did not review her case to help assure her well-being and recovery following the sexual assault as required by DoDI 6495.02.

Command and Installation SARCs. Installation SARCs serve as the central contacts to oversee sexual assault awareness, prevention, and response training and to ensure appropriate care is coordinated and provided to sexual assault complainants. Command SARCs are responsible for the detailed oversight and management of their respective commands' sexual assault cases. The 2d Marine Logistics Group Command SARC (generally referred to as the Command SARC) supported LCpl Lauterbach's regiment. A review of II Marine Expeditionary Force and Marine Corps Installation-East records and field interviews revealed that following LCpl Lauterbach's sexual assault complaint:

- The Command SARC did not ensure LCpl Lauterbach's data was entered into SAIRD in a timely manner.
- The Command SARC did not actively participate as a CMG member and did not attend monthly CMG meetings as required.
- The Marine Corps Installation-East Installation SARC did not convene required monthly CMG meetings during the time LCpl Lauterbach's sexual assault complaint was pending.

LCpl Lauterbach signed a Victim Reporting Preference Statement recognizing she was making an unrestricted sexual assault report. The UVA told us she immediately provided a copy to the Command SARC as required. In this regard the SAIRD User Manual provides:

The responsibility of the SARC is to ensure that the UVA's under their management are correctly inputting the required data into SAIRD and that incidents are not kept in Draft status for too long; approximately one month is sufficient for a UVA to gather and input the required data and have it submitted for acceptance by HQMC.

The Command SARC acknowledged that LCpl Lauterbach's UVA informed him about the sexual assault complaint. He also acknowledged his responsibility for ensuring the civilian VA entered LCpl Lauterbach's data into SAIRD within 30 days, which he did not do. As stated earlier, the civilian VA ultimately entered LCpl Lauterbach's data in SAIRD about 6 months after the sexual assault complaint. The Command SARC could not recall why he did not ensure the civilian VA entered LCpl Lauterbach's data into SAIRD within 30 days.

As discussed earlier, DoD and Navy policy requires each installation to have a CMG which the Installation SARC chairs. The CMG is required to review all unrestricted sexual assault reports involving active duty victims to facilitate monthly victim updates, and ensure system coordination, accountability, and victim access to quality services. CMG members are required to consider and implement measures to facilitate and assure the victim's well-being, and closely monitor victim progress and recovery.

According to the Installation SARC, the CMG was not fully established during the May through December 2007 timeframe when LCpl Lauterbach's sexual assault complaint was pending. The CMG commenced meeting sometime in 2006, and had periodic meetings but was not functioning fully in accordance with DoD sexual assault policy until January 2010. The Installation SARC told us there were many challenges in establishing the SAPR program at Camp Lejeune, including frequent SARC and UVA rotational reassignments; lack of trained SARCs and UVAs; and requirements to use an unfamiliar reporting database (SAIRD). He said CMG members were expected to review each unrestricted sexual assault case during the CMG meeting. He also said the reviews were supposed to "ensure sexual assault victims received the proper care and services to which they were entitled, that things unfolded as they should systemically (no supporting agency "disconnects," no communication lapses); and that no victim was lost in the system."

We reviewed Marine Corps Community Services records showing case management meetings were held in August, October, November and December 2007. Our interviews with SAPR personnel suggested other monthly CMG meetings were held, but there was no documentation as to what dates the meetings occurred. The data showed:

- August 28, 2007, the Installation SARC had a SARC meeting in which he discussed that after many starts and stops, it was imperative to stand up a working sexual assault CMG. It was agreed sexual assault CMG monthly meetings would convene on the last Tuesday of each month.
- October 2, 2007, the CMG met and discussed several unrestricted sexual assault cases; however, LCpl Lauterbach's case was not discussed. LCpl Lauterbach's Command SARC attended the meeting but said he was not ready to discuss his cases.

- November 27, 2007, the CMG met. The meeting notes did not reflect whether any unrestricted sexual assault cases were discussed. LCpl Lauterbach's Command SARC did not attend the meeting.
- December 18, 2007, the CMG met and discussed open unrestricted sexual assault cases. LCpl Lauterbach's case was not discussed. LCpl Lauterbach's Command SARC did not attend the meeting.

Discussion

We found the Command SARC did not ensure LCpl Lauterbach's data was entered into SAIRD in a timely manner. The civilian VA had 30 days to input LCpl Lauterbach's sexual assault data into SAIRD yet it was not entered until 6 months after her report. The Command SARC knew LCpl Lauterbach reported being sexually assaulted, but he did not ensure her data was entered into SAIRD. He could not explain why.

We also found the Command SARC never informed the Installation SARC about LCpl Lauterbach's case. We specifically note the Command SARC's failure to inform the Installation SARC about the UVA's concerns when LCpl Lauterbach reported being physically assaulted and when she reported property damage to her car just weeks after her sexual assault complaint. We asked the Command SARC why he never reported the incidents or UVA concerns to the Installation SARC. He told us there was no requirement for such reporting, and he thought NCIS and LCpl Lauterbach's command were handling issues related to the assaults. However, he could not explain why he never discussed her case at the CMG. Consequently, LCpl Lauterbach was never identified as a current victim, and her case was never discussed at any CMG meeting. The Installation SARC told us he did not know about LCpl Lauterbach's case until after she was murdered.

We concluded the Installation and Command SARCs did not comply with standards in responding to LCpl Lauterbach's sexual assault complaint and, therefore, her safety, well-being and recovery were not monitored as required. LCpl Lauterbach's information was not entered in SAIRD, her Command SARC did not actively participate in the CMG, and the CMG was not functioning in accordance with policy. As a result, the professionals who met to review sexual assault cases were unable to facilitate LCpl Lauterbach's proper care and services or assure her safety, well-being and recovery from the sexual assault.

c. Command Officials

We concluded overall, responsible Combat Logistics Regiment command officials responded inadequately to LCpl Lauterbach's sexual assault complaint. They assigned the victim a UVA, implemented MPOs, ensured NCIS was notified, and ensured the victim sought medical attention. However, they failed to remain engaged with the victim and monitor her well-being throughout the sexual assault investigative process.

Standards

DoDI 6495.02, "Sexual Assault Prevention and Response Program Procedures," June 23, 2006. Attachment 1 to Enclosure 5, "Commanders Checklist for Unrestricted Reports of Sexual Assault," provides guidance for commanders' response to a sexual assault report. Office of the Chief of Naval Operations Instruction (OPNAVINST) 1752.1B, "Sexual Assault Victim Intervention (SAVI) Program," December 29, 2006, includes a commander's checklist that prescribes elements for meeting command SAVI Program requirements and ensuring effective command prevention and response to sexual assault incidents. Other relevant policy and requirements are listed in Appendix B. Individual requirements are cited and discussed throughout this section.

Facts

On May 11, 2007, LCpl Lauterbach told her OIC the accused sexually assaulted her. In response to LCpl Lauterbach's complaint, the OIC immediately assigned a UVA, who accompanied LCpl Lauterbach to NCIS and the family counseling center.

LCpl Lauterbach's OIC told us upon receiving the sexual assault complaint on May 11, 2007, she issued a verbal order to the accused to cease all contact with LCpl Lauterbach and to remain 1000 feet away from her. LCpl Lauterbach's Regimental Commander then issued an initial MPO on May 24, 2007, to remain in effect for 90 days (until August 24, 2007). As described in the MPO, the basis was "allegations of rape, as well as a pending investigation."

The Regimental Commander issued a second 90-day MPO on June 25, 2007, to remain in effect until September 24, 2007; a third 90-day MPO on September 20, 2007, to remain in effect until December 23, 2007; and a fourth 90-day MPO on January 8, 2008, to remain in effect until March 28, 2008.

The Regimental Commander said he ensured both LCpl Lauterbach and the accused understood the MPO was applicable on base as well as off base in the civilian community. LCpl Lauterbach's company commander advised LCpl Lauterbach to report immediately if the accused violated the MPO, and excused her from events where the accused might be present. Additionally, the chain of command honored LCpl Lauterbach's request to be reassigned to another duty location. This duty location was geographically separated from the accused and was the same as her UVA's duty location.

DoDI 6495.2 and MCO 1752.5 both include a "Commander's Checklist" to assist in processing sexual assault complaints. Both checklists specify commander's responsibilities including the following 7 items:

- (1) Ensure the SARC is notified immediately" OR "Activate the on-call VA and request immediate assistance. The VA will ensure the victim understands the medical, investigative, and legal process, and is advised of their victim rights, even if the victim ultimately declines ongoing VA support.*

When LCpl Lauterbach reported being sexually assaulted, the OIC notified the UVA. The response was immediate and ensured LCpl Lauterbach's initial needs were addressed.

The UVA briefed her on victim rights and told her that her report would be referred to NCIS for a criminal investigation. Based on our review, the UVA provided immediate and ongoing intervention and support to LCpl Lauterbach.

- (2) Ensure the victim understands the availability of victim advocacy and the benefits of accepting advocacy and support*

Based on our review, we determined the UVA informed LCpl Lauterbach about her rights regarding unrestricted reporting and LCpl Lauterbach knew about available advocacy services. LCpl Lauterbach used these services through continued contact with her UVA and attendance at mental health counseling sessions.

- (3) Determine the need for temporary reassignment to another unit, duty location, or living quarters on the installation of the victim or the alleged offender being investigated, working with the alleged offender's commander if different than the victim's commander, until there is a final legal disposition of the sexual assault allegation, and/or the victim is no longer in danger. To the extent practicable, consider the desires of the victim when making any reassignment determinations*

LCpl Lauterbach's UVA requested LCpl Lauterbach's reassignment to a new duty location, and the chain of command approved the request. The reassignment allowed LCpl Lauterbach's UVA to have constant contact with her and, since LCpl Lauterbach and the accused had worked in the same section before the reassignment, it separated them to facilitate compliance with the MPOs.

- (4) Ensure the victim understands the availability of other referral organizations staffed with personnel who can explain the medical, investigative, and legal processes and advise the victim of his or her victim support rights*

- (5) Emphasize to the victim the availability of additional avenues of support; refer to available counseling groups and other victim services*

We asked the Regimental Commander and other members of LCpl Lauterbach's chain of command if they ever explained the medical and legal organizations available to support her, or the legal and investigative processes she would encounter following the sexual assault report. Neither the Regimental Commander nor anyone else in LCpl Lauterbach's chain of command could remember any such explanations. The Regimental Commander said the UVA told him she briefed LCpl Lauterbach on these matters. We were unable to verify the UVA briefed LCpl Lauterbach.

- (6) Attend the monthly case management meeting as appropriate*

We reviewed minutes from the Camp Lejeune CMG meetings held on October 2, 2007, November 27, 2007, and December 18, 2007. Neither the Regimental Commander nor LCpl Lauterbach's UVA attended these meetings. The Command SARC attended the October meeting but did not discuss LCpl Lauterbach's case. The Regimental Commander advised he did not use the required checklist, and we did not find any records that he or a designee attended the CMG meetings.

(7) Ensure the victim receives monthly reports regarding the status of the sexual assault investigation from the date the investigation was initiated until there is a final disposition of the case

Additionally, the Regimental Commander said he spoke with LCpl Lauterbach on only one occasion. He said he asked her how she was doing, and told her the case was still being investigated. Otherwise, he never updated her on the case status because he assumed others in her command were doing so. The UVA was the only individual involved in the process who updated LCpl Lauterbach as the investigation progressed. These updates were sporadic, however, usually following the UVA calling the case agent for updated information.

Discussion

When LCpl Lauterbach's chain of command received the sexual assault report, they took immediate action that complied with DoD and USMC requirements; however, evidence did not indicate the responsible commander took appropriate follow-on actions.

The Regimental Commander was responsible for ensuring the items on the Commanders' Checklist were adhered to because he told us his policy required sexual assault issues be handled at the regimental level. The Regimental Commander told us he did not use the Commander's Checklist, did not attend monthly case management meetings, and did not update LCpl Lauterbach on case status. Based on our review, LCpl Lauterbach's access to the UVA and her attendance at mental health counseling were the only indications she received any continuing support.

2. Did Responsible Officials Respond Adequately to Events Following the Sexual Assault Complaint to Ensure LCpl Lauterbach's Safety and Well-Being?

We concluded Combat Logistics Regiment 27 command officials assured LCpl Lauterbach's safety immediately following the sexual assault complaint, but failed to remain engaged and monitor her safety and well-being throughout the sexual assault investigation, and took no action on two possibly related harassment incidents.

Standards

DoDI 6495.02, "Sexual Assault Prevention and Response Program Procedures," June 23, 2006. Attachment 1 to Enclosure 5, "Commanders Checklist for Unrestricted Reports of Sexual

Assault,” provides guidance for commanders’ response to a sexual assault report, including actions to protect the victim’s safety and well-being. OPNAVINST 1752.1B, “Sexual Assault Victim Intervention (SAVI) Program,” December 29, 2006, includes a commander’s checklist that prescribes elements for meeting command SAVI Program requirements and ensuring effective command prevention and response to sexual assault incidents. Other relevant policy and requirements are listed in Appendix B. Individual requirements are cited and discussed throughout this section.

Facts

The Commander’s Checklist states the commander should:

- Ensure the physical safety of the victim--determine if the alleged offender is still nearby and if the victim desires or needs protection.”
- Determine if the victim desires or needs a “no contact” order or “Military Protective Order (MPO),” to be issued, particularly if the victim and the alleged offender are assigned to the same command, unit, duty location, or living quarters.
- Throughout the investigation, consult with the victim, and provide the victim appropriate emotional support resources.
- Continue to monitor the victim’s well-being.
- Ensure the victim receives monthly reports regarding the status of the sexual assault investigation from the date the investigation was initiated until there is a final disposition of the case.

When LCpl Lauterbach reported being sexually assaulted, her chain of command initially issued both a verbal order and written MPO ordering the accused to cease contact and stay 1000 feet away from her. The basis for the MPO was “allegations of rape, as well as a pending investigation.” Testimony revealed it was standard practice to implement an MPO in a sexual assault case.

The initial written MPO was issued May 24, 2007, and was effective for 90 days. According to chain of command interviews, the accused received a copy but they were unsure whether LCpl Lauterbach also received a copy. Based on our review, LCpl Lauterbach did receive a copy.

The MPOs were updated as follows: June 25, 2007, a second MPO was issued to remain in effect for 90 days until September 24, 2007; September 20, 2007, a third MPO was issued to remain in effect for 90 days until December 23, 2007; January 8, 2008, a fourth and final MPO was issued to remain in effect for 90 days until March 28, 2008. According to the Regimental Commander, the lapse in the MPO between December 24, 2007, and January 7, 2008, was due to the Christmas holidays. Our review did not reveal any noncompliance with the MPOs.

Shortly after reporting sexual assaults, LCpl Lauterbach reported her car had been “keyed” in one incident, and an unknown assailant “punched” her in the face in a second incident. According to LCpl Lauterbach’s UVA, she reported and encouraged LCpl Lauterbach to report the keying and assault incidents to command officials and NCIS.

While the Regimental Commander acknowledged hearing about the additional incidents he made no effort to monitor LCpl Lauterbach’s well-being. He told us NCIS had looked into both incidents and were unable to link either incident to the original sexual assault complaint. Therefore, he felt there was nothing else he could do.

Discussion

Based on our interviews of LCpl Lauterbach’s chain of command and review of the sexual assault investigation, LCpl Lauterbach’s physical safety immediately after the sexual assault report was adequately addressed. A verbal protective order was imposed within 24 hours, followed by four written MPOs which generally remained in effect through March 2008.

DoD, Navy and Marine Corps sexual assault policy required LCpl Lauterbach’s commander to remain actively involved in the sexual assault complaint. We think this responsibility extended to the two additional incidents in which LCpl Lauterbach may have been victimized. Additionally, policy required the commander ensure LCpl Lauterbach was kept apprised on the case status, her well-being was addressed, and she was provided the necessary advocacy services. We found no evidence to indicate the Regimental Commander acted to comply with this policy, other than immediately after LCpl Lauterbach made her sexual assault complaint.

We concluded the UVA was the only person routinely involved in the case who regularly consulted with LCpl Lauterbach to monitor her well-being. However, following the UVA’s reassignment in September 2007, her contact with LCpl Lauterbach was less frequent. Despite information available to LCpl Lauterbach’s Regimental Commander regarding her continued victimization, he failed to consult with her to monitor her well-being or ensure she received the appropriate support.

V. CONCLUSIONS

We concluded the NCIS criminal investigation into LCpl Lauterbach’s rape complaint was both substantively and procedurally deficient. NCIS agents did not conduct the criminal investigation diligently, timely, or completely, and logical investigative steps were not completed.

Camp Lejuene SAPR officials responded inadequately to LCpl Lauterbach’s rape complaint. LCpl Lauterbach’s information was not entered in SAIRD, her Command SARC did not actively participate in the CMG, and the CMG did not function in accordance with policy. Consequently, the CMG, the group responsible for reviewing sexual assault cases, was unable to facilitate LCpl Lauterbach’s care and services or assure her safety, well-being and recovery following the sexual assault, principally because it did not know about it.

DoD, Navy and Marine Corps sexual assault policy required commanders at all levels to remain actively involved to ensure LCpl Lauterbach was kept apprised on the investigation, her well-being was addressed, and she was provided the needed advocacy services. We concluded Combat Logistics Regiment 27 command officials assured LCpl Lauterbach's safety immediately following her sexual assault complaint, but failed to remain engaged and monitor her safety and well-being throughout the sexual assault investigation.

VI. RECOMMENDATION

We recommended the Secretary of the Navy take corrective action, as necessary, with respect to officials whom we identified as accountable for the regulatory violations and procedural deficiencies described in this review.

VII. MANAGEMENT COMMENTS

In response to the draft report, we received comments from the Principal Deputy Under Secretary of Defense (Personnel and Readiness) (PDUSD (P&R)), and the Secretary of the Navy (SECNAV). The SECNAV response included enclosures from the NCIS, Navy Sexual Assault Prevention and Response Office and the Marine Corps Staff Directors. (Appendix C).

The PDUSD (P&R) concurred with the recommendation in the draft report, and outlined additional actions he would take to assess Navy compliance with DoD sexual assault policy.

Overall, the Navy concurred with our report and recommendation, advising it began many new initiatives after the events described in the report. Recognizing these new initiatives were not available when LCpl Lauterbach was murdered, which made her death even more tragic, the Secretary of the Navy advised that the Navy's progress in sexual assault prevention and response will ensure other sailors and marines are not similarly victimized.

For example, the Secretary advised that shortly after assuming office in 2009, he established the Department of Navy Sexual Assault Prevention and Response Office with a senior executive head reporting directly to him, the only such arrangement in DoD. In addition, he noted the Director, NCIS, had already ordered measures to assess further his agency's personnel shortcomings in LCpl Lauterbach's case and determine whether adverse personnel action was appropriate. He also advised the Director will correct expeditiously any remaining systemic deficiencies identified in our report.

With respect to command officials, the Secretary stated that, in hindsight, command could have paid more attention to its reporting responsibilities. On the other hand, he advised the immediate responses (victim advocate, counselors, and command) to LCpl Lauterbach's sexual assault complaint were excellent, and she received continuing care from victim advocates. We agree.

Overall, the Navy's comments on the draft report are fully responsive. In addition, the continuing initiatives and actions described in the comments should help ensure similar

deficiencies do not occur in handling future sexual assault complaints. However, as the Director, NCIS, stated in his comments on the draft report, “[c]learly corrective action is required in this case, as both a means to affix individual accountability, but more importantly, as a method to advance the quality of NCIS sexual assault response and investigative capability overall.”

Based on the above, we will not address individual comments in the Marine Corps comments, even though some are based on inaccurately interpreting our individual findings and conclusions. For example, the Marine Corps states:

The draft report also cites that CLR-27 officials took no action on two possible related harassment incidents. Yet it also acknowledges that NCIS was unable to link either incident to the sexual assault complaint after looking into both incidents, and that the investigators informed the Regimental Commander that there was nothing else he could do. . . .

This statement is inaccurate. We did not acknowledge NCIS was unable to link either incident to the sexual assault complaint; nor did we have any indication investigators informed the Regimental Commander there was nothing else he could do. To the contrary, we faulted NCIS investigative efforts related to reviewing the two possibly related incidents. In reality, those investigative efforts were inadequate to determine if the incidents were related to the sexual assault complaint. The Regimental Commander told us one of his staff members told him NCIS was unable to link either incident to the original sexual assault complaint; so he did not pursue the matter further. As evident in the report, our primary concerns about the command’s response involved:

- Late data entry into the SAIRD system. The overall victim advocate responsibility was assigned to the military victim advocate (an exception to the general policy) while leaving data input responsibility with the civilian victim advocate. The civilian advocate told us she had the data input responsibility and she did ultimately satisfy that responsibility. Although we did not have specific facts showing a cause and effect relationship, it was clear the late data entry prevented management from receiving information they could have used to monitor LCpl Lauterbach’s sexual assault complaint.
- Although policy required monthly CMG meetings with all involved representatives to address each individual sexual assault complaint, that policy was not fully implemented until January 2010, well after LCpl Lauterbach’s sexual assault complaint. Even though three monthly meetings were conducted while the investigation was ongoing, LCpl Lauterbach’s case was not identified or discussed at any CMG meeting, contrary to policy requirements.

However, recognizing initial new policy implementation is not always perfect we did not recommend specific personnel or other action to address these deficiencies. Instead, we recommended the Secretary of the Navy take “necessary” corrective action against accountable officials.

According to the Marine Corps comments, “. . . adverse action upon the persons identified in the draft report is not warranted.” Since the Marine Corps apparently has determined, and the Secretary of the Navy has accepted the position that actions are not appropriate against the responsible command officials, our recommendation is satisfied as it pertains to the command officials.

Appendix A. Significant Investigative Events

Date	Elapsed Days		Event
	Between Events	Cumulative	
On/or about 03/26/07	0	0	LCpl Maria Lauterbach, Combat Logistics Regiment 27, 2D Marine Logistics Group, was allegedly sexually assaulted in “HP 308” barracks, Camp Lejeune, while the accused, Corporal Cesar Laurean, in her direct chain of command, was the assigned “HP 308” barracks Duty NCO from March 25, 2007 to March 26, 2007.
On/or about 04/09/07	14	14	Cpl Laurean allegedly sexually assaulted LCpl Lauterbach a second time in their OIC’s bathroom at the Group Consolidated Administration Center. (Date estimated from allegation and reviewing Lauterbach statement of May 11, 2007).
05/11/07	32	46	At 0845, Marine Corps Criminal Investigation Division investigator was notified in person about a rape at an unknown location. Military police contacted LCpl Lauterbach who stated she had been raped on two occasions.
05/11/07	0	46	A Marine Corps Criminal Investigation Division investigator notified a Supervisory Special Agent at NCIS Camp Lejeune, NC, that LCpl Lauterbach had reported being sexually assaulted on two occasions between March 26, 2007, and April 9, 2007, and had named a suspect in the complaint. NCIS assumed jurisdiction for the complaint and assigned a case agent to investigate.
05/11/07	0	46	A Uniformed Victim Advocate (UVA) accompanied LCpl Lauterbach to the NCIS office where she was interviewed regarding the complaint. LCpl Lauterbach told the case agent that she and the accused had sexual intercourse on two occasions. She said she did not want to have sexual intercourse with the suspect, but she did not say “no” on either occasion. She also said she told the accused to stop during each sexual intercourse and he stopped, but she felt she had been raped. She told the case agent the first incident occurred in her barracks room while the accused was on duty in late March 2007. She said the second incident occurred approximately 2 weeks later in the OIC’s bathroom at the Group Consolidated Administration Center. The case agent prepared a typed, sworn statement. LCpl Lauterbach did

Date	Elapsed Days		Event
	Between Events	Cumulative	
			not sign the sworn statement on the interview date.
05/11/07	0	46	The case agent interviewed the OIC, who furnished background information on both LCpl Lauterbach and Cpl Laurean, and named other individuals with possible knowledge about the alleged sexual assault.
05/15/07	4	50	In mid-May, the UVA assigned to LCpl Lauterbach telephoned the case agent reporting damage to LCpl Lauterbach's car. The vehicle allegedly was "keyed," leaving a bad scratch or scratches. According to the UVA, the case agent told her "vandalism. . . did not rise to the level of an NCIS investigation" and advised her to report the incident to the Provost Marshal's Office, if she needed a report for her insurance company. The case agent did not pursue the matter as part of the rape investigation.
05/18/07	3	53	The case agent re-interviewed LCpl Lauterbach--no investigative activity occurred during the week between the May 11 and May 18 interviews. In the May 18 interview, LCpl Lauterbach clarified information about 2006 incident in which she allegedly was involved in a theft. The case agent incorporated information from the May 18 interview in the May 11, 2007, statement, and had LCpl Lauterbach sign the statement as if all the information was derived from the May 11 interview.
05/18/07	3	53	The case agent interviewed the accused, who denied any sexual contact with LCpl Lauterbach and agreed to take a polygraph examination. He also (1) presented two alibis covering the approximate times in which the sexual assaults allegedly occurred, and (2) named other possible witnesses with knowledge about the complaint. He declined to sign a written statement regarding the allegations, but told the case agent he would complete one on his own and provide it to NCIS at another time.
05/22/07	4	57	The case agent contacted the accused, who said he had elected to seek counsel and was told not to participate further in interrogations or a polygraph, and not to provide a statement.
05/24/07	2	59	An unknown assailant allegedly assaulted LCpl Lauterbach physically (punch in the face) in the parking lot between building HP-307 and Holcomb Blvd, Camp Lejeune.

Date	Elapsed Days		Event
	Between Events	Cumulative	
05/31/07	7	66	The UVA telephoned the case agent reporting the physical attack on LCpl Lauterbach. The case agent asked the UVA to have LCpl Lauterbach come in for an interview.
05/31/07	0	66	As requested, LCpl Lauterbach went to NCIS and was interviewed. She advised the case agent that an unknown assailant, who called her by her first name before the assault, had punched her in the face in an on-base parking lot, causing bruising and swelling to her left jaw. She described the assailant and named LCpl (name redacted) as a person fitting the description. She also identified Cpl (name redacted) as a person she advised about the assault the day it occurred, and the UVA as a person she advised about the assault the following day. LCpl Lauterbach said the assailant was taller and bigger than Cpl Laurean. LCpl Lauterbach did not indicate she thought the assailant was acting for Cpl Laurean.
05/31/07	0	66	The case agent went to the parking lot where the physical assault allegedly occurred, sketched and photographed the scene, and determined there was no video camera in the area that might have recorded the attack. The case agent did not perform any other investigative activity relative to the assault in the parking lot. An Investigative Action report covering the incident was dated Nov 18, 2008, and included in the December 18, 2008, ROI. The incident was not investigated further.
06/27/07	27	93	LCpl Lauterbach contacted NCIS and advised she was pregnant. The case agent had her provide another statement. In this statement, she acknowledged having consensual sexual intercourse with her boy friend 4-5 weeks after her rape complaint, but opined that Cpl Laurean fathered the baby during the alleged rapes.
06/27/07	0	93	The case agent interviewed and obtained a sworn statement from LCpl (name redacted); regarding rumors she had been sexually harassed by Cpl Laurean. The witness stated surprise upon hearing the allegations.
10/15/07	110	203	A Supervisory Special Agent at NCIS Camp Lejeune, NC, transmitted a Report of Investigation (ROI) dated May 18, 2007, to NCIS headquarters. The ROI was labeled (OPEN) Priority II Rape Investigation. Trial Counsel, LSSS, 2D MLG, CALE, was included on the

Date	Elapsed Days		Event
	Between Events	Cumulative	
			distribution list.
10/18/07	3	206	Trial Counsel, LSSS, 2D MLG, CALE, received the Lauterbach ROI (INTERIM), Priority II Rape Investigation.
10/19/07	1	207	A Supervisory Special Agent at NCIS Camp Lejeune, NC, transmitted an Interim ROI dated October 18, 2007, to NCIS HQ. The ROI was labeled (INTERIM), Priority II Rape Investigation.
12/07/07	49	256	The case agent interviewed Cpl (name redacted), USMC, and (name redacted). (Name redacted) supplied background information about LCpl Lauterbach and described what she knew about the alleged sexual assaults. (Name redacted) described how she had acted as an unofficial mediator between LCpl Lauterbach and Cpl Laurean. She stated that LCpl Lauterbach told her about two separate incidents in which LCpl Lauterbach said she felt sexually harassed when Cpl Laurean tried to have sex with her in their OIC's bathroom. Cpl (name redacted) said he confronted Cpl Laurean about the barracks room incident and Cpl Laurean told him he had stayed at his own residence the night he had duty and did not approach LCpl Lauterbach about staying in her room.
12/07/07	0	256	The case agent received the duty log book for "HP 308" barracks where LCpl Lauterbach claimed the first rape occurred. The duty roster for Cpl Laurean's unit revealed that he was scheduled for a duty shift beginning on March 25, 2007. The duty log for the unit indicated that Cpl Laurean was the "HP 308" barracks Duty NCO from 1155 hours on March 25, 2007, until 0730 hours on March 26, 2007. While performing his duty, Cpl Laurean relieved Cpl (name redacted) at 1155 hours and Cpl Laurean was relieved by Cpl (name redacted) at 0730 hours. PFC (name redacted) was "HP 308" barracks Assistant Duty NCO for March 25, 2007 to March 26, 2007 and worked from 1217 hours to 0430 hours. The log book displayed the initials "CAL" which were entered in half hour intervals until 0030 (DNCO tours barracks). The next time the initials "CAL" appear were at 0305 hours then again at 0530 and hourly after that until 0730. (No further investigative activity occurred until December 17, 2007).

Date	Elapsed Days		Event
	Between Events	Cumulative	
12/17/07	10	266	The UVA notified the case agent that LCpl Lauterbach did not report for duty.
01/08/08	22	288	The Onslow County Sheriff's Office (OCSO) asked the case agent to "begin screening interviews of ... [Lcpl Lauterbach's] friends, counselors and religious personnel to whom she may have confided." Much investigative activity, including many interviews, ensued subsequently in 2008, producing information directly related to the rape allegation.
01/12/08	4	292	LCpl Lauterbach's remains were found burned and buried in a shallow grave in the backyard of Cpl Laurean's off-base residence in Jacksonville, NC.

Appendix B. Standards

1. Did Responsible Officials Comply with Applicable Requirements in Responding to LCpl Lauterbach's Sexual Assault Complaint?

a. NCIS Investigation

(1) **DoD Instruction (DoDI) 5505.3, "Initiation of Investigation by Military Criminal Investigative Organizations," June 21, 2002.** Policy to ensure Military Criminal Investigative Organizations are independent, objective, and effective.

(2) **DoDI 1030.2, "Victim and Witness Assistance Procedures," June 4, 2004.** Assigns responsibilities and prescribes procedures to assist victims and witnesses of crimes committed in violation of the Uniform Code of Military Justice. Chapter 6, Procedures," paragraph 6.2 provides:

Information to be provided during investigation of a crime. If the victim or witness has not already received the DD Form 2701 from law enforcement officials, it shall be used by investigators as a handout to convey basis information and points of contact. The date it is given to the victim or witness is reportable and shall be recorded on the appropriate form authorized for use by the particular Service. This serves as evidence that the officer notified the victim or witness of his or her statutory rights.

(3) **SECNAVINST 5430.107, "Mission and Functions of the Naval Criminal Investigative Service," December 28, 2005.** Sets forth NCIS authority, responsibilities, mission, functions and relationship with other Department of the Navy organizations and activities. Chapter 7, "Mission and Functions," paragraph 7C (2)(e), provides:

Promptly notify affected commanders of any information or aspect of investigative, counterintelligence or security activities indicating an actual or suspected threat to naval operations, personnel, facilities or other assets, or any occurrence which warrants the attention of fleet, component or combatant commanders, the DON/DOD leadership or other seat of government officials.

Chapter 7, "Mission and Functions," paragraph 7C (3), provides:

Declination of Investigations: NCIS may, at its discretion, decline to undertake the investigation of a case. If this occurs, NCIS shall expeditiously inform the affect command or activity.

(4) **Navy Criminal Investigative Service Manual 1, "Manual for Administration," December 2006.** Establishes investigative policy and doctrine to ensure standardization in methods, procedures and techniques. Chapter 25, "Control Agent," paragraph 25-3.2. provides:

It is the responsibility of each Special Agent (SA) assigned as control agent (case agent) to enter investigative data into applicable NCIS reporting systems, from initiation through closure of an investigation or inquiry, and to ensure all data is complete, accurate, and a timely investigative product in accordance with NCIS policy and procedures.

Chapter 25, "ROI," paragraph 25-5.6. e., provides: e. Timeliness Requirements.

(1) Priority (I) - Transmit an ROI (INTERIM) within five (5) business days regardless of case category. The same timeline is used for the transmission of an ROI (INTERIM) after the completion of the last substantive investigative effort when awaiting adjudicative action.

(2) Priority (II) - Transmit an ROI (INTERIM) within thirty (30) calendar days on Director's Special Interest (DSI) cases and 7H investigations in which NCIS is the primary investigative agency or NCIS is the lead or support agency in a joint death investigation.

(3) Priority (II) - Transmit an ROI (INTERIM) within sixty (60) calendar days on all other case categories.

(4) Priority (II) - Transmit an ROI (INTERIM) within ten (10) business days after the completion of the last substantive investigative effort when awaiting adjudicative action.

Chapter 25, "Report Writing," paragraph 25-9.1 – 25.9.2 provides:

Timeliness Requirements. All investigations should be completed and reported as expeditiously as possible. Timely reporting is linked to the priority level and type of report. ROI (OPEN). (2) Priority (II)-Transmit within three (3) business days after the receipt of information, which predicates investigation. ROI (INTERIM) (3) Priority (II)-Transmit within sixty (60) days on all other case categories.

Investigative Action (IA). Complete the IA within five (5) business days from the day of collecting the information or performing the investigative act.

Chapter 45, "Managing Investigations and Operations," paragraph 45-2.1, provides:

NCIS investigations will be conducted in accordance with the President's Council on Integrity and Efficiency/Executive Council on Integrity and Efficiency (PCIE/ECIE) Quality Standards for Investigations. The three general standards are:

1. Qualifications. Individuals assigned to conduct investigative activities must collectively possess the professional proficiency for required tasks;

2. Independence. In all matters relating to investigative work, the investigative organization must be free, both in fact and appearance, from impairments to independence; organizationally independent; and must maintain an independent attitude; and

3. Due Professional Care. Due professional care must be used in conducting investigations and preparing related reports. This standard requires a constant effort to achieve quality professional performance and includes:

(a) Thoroughness. All investigations must be conducted in a diligent and complete manner. Reasonable steps will be taken to ensure pertinent issues are sufficiently resolved, and that all appropriate criminal, civil, contractual, or administrative remedies are considered.

(b) Legal Requirements. Investigations will be initiated, conducted, and reported in accordance with all applicable laws, rules, and regulations, including NCIS policy and procedures. . . .

(d) Impartiality. All investigations must be conducted in a fair and equitable manner, with the perseverance necessary to determine the facts.

(e) Objectivity. Evidence must be gathered and reported in an unbiased and independent manner in an effort to determine the validity of an allegation or resolve an issue. . . .

(g) Timeliness. All investigations must be conducted and reported with due diligence and in a timely manner. This is especially critical given the impact investigations have on the lives of individuals and activities of organizations.

(h) Accurate and Complete Documentation. Investigative reporting and investigative accomplishments (indictments, convictions, recoveries, etc.) must be supported by adequate documentation (investigator notes, court orders of judgment and commitment, suspension or debarment notices, settlement agreements, etc.) in the case file. . . .

Chapter 45, “Managing Investigations and Operations,” paragraph 45-2.2, provides:

In addition to the three general standards, there are four qualitative standards that must be addressed if an investigative effort is to be successful. These standards are:

1. Planning. Establishing case specific priorities and developing objectives to ensure that individual tasks are performed efficiently and effectively.

2. *Execution. Conducting investigations in a timely, efficient, thorough, and legal manner.*

3. *Reporting. Reports (oral and written) must thoroughly address all relevant results of the investigation and be accurate, clear, complete, concise, logically organized, timely, and objective.*

Chapter 45, “Managing Investigations and Operations,” paragraph 45-3.3, provides:

Investigative plans will be maintained in the case file, in addition to the Case Activity Record (CAR), during pendency of the case and may be destroyed after one year, along with case agent's notes, if the case file is no longer needed as determined. Investigative plans are living documents, which will be updated as the investigation continues.

Chapter 45, “Case Reviews,” paragraph 45-3.4 – 45-3.5, provides:

The requirement for supervisors to conduct case reviews is well established within NCIS. Case reviews are among the most important functions performed by supervisors and must be conducted at least every 30 days. Supervisors may find it necessary to conduct case reviews more frequently depending upon case complexity, performance issues, or for other reasons, but all open investigative, operational, and source files are to be reviewed at least once every 30 days.

Case reviews must be meaningful and pragmatic in order to maximize supervisors’ and case agents’ time. The following specific case review guidance is established as NCIS policy:

- a. Case reviews will be conducted face-to-face whenever possible.*
- b. Supervisors will personally review case files, investigative plans and updates, and accompanying documentation.*
- c. Supervisors must be involved in establishing investigative strategy early on. In all investigations, supervisors and case agents will develop investigative plans within 3 working days.*
- d. Investigative progress, or lack thereof, and necessary investigative operations steps will be the focus of each review.*
- e. Supervisors’ Case Review Records (CRRs) are maintained separately from case file and are used to document case reviews.*
- f. Supervisors must ensure that case agents have a clear understanding of appropriate direction of the investigation/operation/source, investigative/operational actions required, and when actions should be accomplished.*

g. Supervisors will document date(s) of supervisory review(s) and the specific supervisor who conducted each review in the Case Activity Record (CAR). CARs will not address specific supervisory guidance, as that information will be confined to the supervisors' Case Review Record (CRR).

h. Supervisors must follow-up to ensure direction/guidance provided during case reviews has been accomplished or is ongoing. Results of follow-up action will be documented in supervisors' CRRs during subsequent case reviews.

Chapter 45, "Case Review Records," paragraph 45-3.6 provides:

Case Review Record (CRR)

The CRR is designed to document case review requirements, and will contain details of each review and not merely a reflection that case reviews were conducted on a particular date. The CRR is a dynamic document that readily chronicles supervisor direction/guidance and the planning, programming, verification, and evaluation phases of an investigation/operation. A clear understanding should exist between the supervisor and case agents regarding direction of the investigation/operation, investigative actions required, and timeframe for these actions to be completed. The CRR will include a record of all relevant case information, in chronological order, so the reviewer knows exactly what has been completed during the course of an investigation, as well as what has not been accomplished since the last case review. By following up on deadlines imposed, case review sessions serve as excellent opportunities to discuss investigative strategies and accurately track employee productivity.

(5) Navy Criminal Investigative Service Manual 3, "Manual for Investigations," December 2006. Establishes investigative policy and doctrine to ensure standardized methods, procedures and techniques. Chapter 6, "Investigative Theory and Procedures," paragraph 6-4.1, provides:

Oral statements of witnesses, including victims, or of an accused should be reduced to writing immediately after the interview or interrogation. While oral testimony may be valid in every respect, the difficulty arises later when attempting to prove what was stated. Thus, it is important to preserve oral statements by reducing them to writing. It is a standard policy requirement in NCIS, whenever credible information is developed which may be used in an administrative or judicial hearing, to ask the individual at the conclusion of the interview if he/she will furnish a written statement, preferably under oath.

Chapter 6, "Investigative Theory and Procedures," paragraph 6-4.9, provides:

When a victim, witness or suspect provides information, but a statement is not reduced to written form, the results will be reported via Investigative Action (IA) format. This IA should contain all the details provided by the interviewee, including what rights, if any, were advised and why a written statement was not executed. In the case of suspects who waived their rights in writing, the acknowledgement and waiver of rights form should be appended to the IA.

Chapter 14, "Questioning Techniques," paragraph 14-9.3d provides:

Test the validity of a suspect's alibi. If the suspect provides an alibi couched in general terms such as, "I was out riding in my car the evening the fire was set." Ask the suspect to relate specific details, i.e., times, routes, stops, etc.

Chapter 29, "Assault," paragraph 29-6.1 provides:

a. (5) Prepare a crime scene sketch of the scene showing the location of victim, assailant, furnishings, items of evidence and other pertinent objects. Obtain similar photographic coverage.

a. (6) If the time of the offense cannot be fixed through questioning of the victim, witnesses and suspect (s), the approximate time should be determined through circumstantial evidence. . . .

c. (1) Interview and take statements from witnesses, neighbors, persons first on the scene, and other persons in the vicinity of the assault. Individual knowledge of the incident including time, place, and identification/description of both the victim and assailant should be included, as well as information concerning sounds of gunfire, breaking glass, ripped screens, breaking doors or furnishings, screams, or loud arguments. Identities of other potential witnesses as well as a detailed description of the victim's physical appearance and apparent mental state, the appearance of the crime scene surroundings (e.g., bullet holes, broken windows, cut screens, locked or unlocked doors, lights, broken furnishings), and the witnesses' observations about the extent of the victim's fear engendered by the assailant to do the victim bodily harm should be ascertained. . . .

d. (1) Interrogate and obtain a detailed statement from the suspect, including time and place of assault.

d. (2) Obtain full case prints, fingers and palms, from the suspect and obtain photo line-up quality photographs.

d. (3) Pursue follow-up investigation necessary to corroborate or refute an alibi, including interviews and review of documentation (e.g., logbooks, motel registrations, jail and hospital records). Conduct appropriate law

enforcement agency checks to determine the existence of past criminal activity and/or pending arrest warrants. . . .

Chapter 34, “Sex Offenses,” paragraph 34-4.5.1 provides:

Interview any witnesses to the offense, and any witnesses who may provide information regarding victim's or suspect's activities prior to the incident.

a. Preliminary Interview- An agent responding to a sexual assault complaint has three imperatives that demand immediate attention: First, to ascertain the medical condition of the victim. Second, to speak with the victim and any witnesses to establish that a sexual assault has occurred. Third, to identify, locate, and preserve the crime scene and identify a suspect. If a report is delayed by days, weeks, or months, the interview should still take place as soon as possible. If a report is delayed, a crime scene examination must still be conducted. If for some reason a crime scene examination does not occur, it must be documented in the ROI as to why one was not done.

b. Comprehensive Interview-Agents should gather as much information as they can about the case before interviewing the victim. The agents should contact personnel involved thus far in the investigation such as base police and emergency response/medical personnel. . . .

f. Victims should be provided the VWAP pamphlets that outline the rights of victims of crimes. NCIS contact numbers should also be provided along with the VWAP pamphlet at the onset of a criminal investigation. . . .

i. Victims will be provided monthly case status updates, in person if possible, on their investigation until active investigation is complete, at which time command will be responsible for briefing the victim. The updates should be given directly to the victim vice a relative or victim advocate. NCIS will brief command representatives when the updates are provided to the victim. . . .

k. Crime Scene Examination: Immediate steps should be initiated to secure the crime scene, and a detailed search should be conducted as soon as possible. Items as clothing, bed linens, rugs, vehicles, etc., should be given particular attention as they may contain evidence of hair, broken fingernails, semen, or blood.

Chapter 34, “Sex Offenses,” paragraph 34-4.10, provides:

e. NCIS will provide all sexual assault victims and appropriate command (CO/XO) with a monthly case status update. This update is only to advise victims of the case status, specifically if the case is still being actively pursued, or if it has been completed and is pending command action or

legal proceedings. The update brief is not to offer the victim information regarding investigative details or to address discrepancies in information previously provided by the victim. The victim should speak directly to the victim advocate regarding declination of services. All NCIS sexual assault investigations (regardless of title index) will be referred to the appropriate command for adjudication determination. Victim updates should be recorded on the Case Activity Record (CAR). NCIS personnel will ensure that Commanding Officers/SARC's (or designated personnel) know when the victim updates occur. It is important that supervisors ensure all sexual assault victims receive a timely update regardless of their location. . . .

b. Sexual Assault Response Program Officials

(1) DoDI 1030.2, "Victim and Witness Assistance Procedures," June 4, 2004.

Assigns responsibilities and prescribes procedures to assist victims and witnesses of crimes committed in violation of the Uniform Code of Military Justice. Paragraph 6.1, "Initial Information and Services to be Provided to Victims and Witnesses," provides:

At the earliest opportunity after identification of a crime victim or witness, the local responsible official, law enforcement officer, or criminal investigation officer shall provide the following services to each victim and witness, as appropriate: The DD Form 2701, "Initial Information for Victims and Witnesses of Crime," (enclosure 3) or computer-generated equivalent shall be used as a handout to convey basic information and points of contact and shall be recorded on the appropriate form authorized for use by the particular Service. This serves as evidence that the officer notified the victim or witness of his or her statutory rights. The following services shall also be provided by the local responsible official or designee:

Information about available military and civilian emergency medical and social services, victim advocacy services for victims of domestic violence and sexual assault, and, when necessary, assistance in securing such services.

Information about restitution or other relief a victim may be entitled to under references (d) and (e), or other applicable laws, and the manner in which such relief may be obtained.

Information to victims of intra-familial abuse offenses on the availability of limited transitional compensation benefits and possible entitlement to some of the active duty member's retirement benefits under 10 U.S.C. 1058, 1059, 1408 (reference (g)) and DoD Instruction 1342.24 (reference (h)).

Information about public and private programs that are available to provide counseling, treatment, and other support, including available compensation through Federal, State, and local agencies.

Information about the prohibition against intimidation and harassment of victims and witnesses, and arrangements for the victim or witness to receive reasonable protection from threat, harm, or intimidation from a suspected offender and from people acting in concert with or under the control of the suspected offender.

Information concerning military and civilian protective orders, as appropriate.

(2) DoDD 6495.01, “Sexual Assault Prevention and Response (SAPR) Program,” October 6, 2005. Applies to all DoD Components, including the Military Departments and Combatant Commands, and establishes comprehensive DoD policy on prevention and response to sexual assaults. Enclosure 2, “Definitions,” sets forth specific terms and definitions and requires their uniform application in policy documents implementing DoDD 6495.01 requirements. Defines “Unrestricted Reporting” as a process a Service member may use to disclose, without requesting confidentiality or restricted reporting, that he or she is the victim of a sexual assault. The victim’s report and any details provided to healthcare providers, the SARC, a VA, command authorities, or other persons are reportable to law enforcement and may be used to initiate the official investigative process.

(3) DoDI 6495.02, “Sexual Assault Prevention and Response Program Procedures,” June 23, 2006. Consolidates DoD sexual assault program policy under the Under Secretary of Defense (Personnel and Readiness), Sexual Assault Prevention and Response Program Office (SAPRO), for implementation. Implements policy, assigns responsibilities, provides guidance and procedures, and establishes the Sexual Assault Advisory Council (SAAC) for the DoD Sexual Assault Prevention and Response (SAPR) Program. Enclosure 3, “DoD SAPR Program Requirements and Procedures,” paragraph 3.2, provides:

SARCs, provided that they are regularly appointed DoD military or civilian personnel, shall serve as chairperson of a multi-disciplinary case management group that meets monthly to review individual cases of unrestricted reports of sexual assault, unless this responsibility is otherwise delegated by the Military Service.

Familiarize the unit commanders and/or supervisors of sexual assault VAs with the VA roles and responsibilities, using DD Form 2909, “VA and Victim Advocate Supervisor Statement of Understanding,” at Enclosure 9 or a comparable Military Service developed, standardized form.

Ensure standardized criteria for the selection and training of sexual assault VAs complies with Military Service’s specific guidelines. All VA’s

must acknowledge their understanding of their advocacy roles and responsibilities using DD Form 2909, at Enclosure 9, or comparable Military Service-developed, standardized form.

Enclosure 7, “Case Management for Unrestricted Reports of Sexual Assault,” paragraph E.7, provides:

The multi-disciplinary case management group shall be convened by the SARC, or other Military Service-designated authority, on a monthly basis to review individual cases, facilitate monthly victim updates and ensure system coordination, accountability, and victim access to quality services. At a minimum, each group shall consist of the following additional military or civilian professionals who are involved and working on a specific case:

*VA
Military Criminal Investigator
Military Law Enforcement
HCPs and Mental Health/Counseling Services
Chaplain
Command Legal Representative or Staff Judge Advocate
Victim’s Commander*

The members of the Case Management Group shall:

Carefully consider and implement immediate, short-term, and long-term measures to help facilitate and assure the victim’s well-being and recovery from the sexual assault.

Closely monitor the victim’s progress and recovery.

Enclosure 9, “Victim Advocate and Supervisor Statements of Understanding,” paragraph 1.a.(6), provides:

I understand I am expected to attend or participate in monthly case management meetings for any case for which I am the assigned victim advocate.

Enclosure 10, Attachment 1, “VA Sexual Assault Response Protocols Checklist,” requires that the VA:

Assess for imminent danger of life-threatening or physical harm to the victim by himself or herself (suicidal), by another (homicidal), or to another (homicidal).

Ensure the victim is aware of the actions available to promote his or her safety.

Serve as a member of the case management group and attend all Sexual Assault Case Management Group meetings involving the victim's case in order to represent the victim and to ensure the victim's needs are met.

Consult regularly with the SARC on ongoing assistance provided.

(4) SECNAVINST 1752.4A PERS-61, "Sexual Assault Prevention and Response," December 1, 2005. Guidance for establishing a sexual assault prevention/victim assistance program in the Department of the Navy, including developing and maintaining a sexual assault reporting system and database for data on all such offenses against persons over 18 years old and not married to the alleged offenders. Enclosure 2, "Sexual Assault Incident Data Collection Report and Explanation," establishes guidance on maintaining a comprehensive database for all sexual assault incidents reported to commands or civilian or military law enforcement. Enclosure 2, paragraph 3b, "Reporting Requirements," provides:

Sexual Assault Incident Reports should be completed within 10 days of initial notification to any Navy or Marine Corps support service or command. Submission of the initial report should not be delayed to obtain more information.

(5) Office of the Chief of Naval Operations Instruction (OPNAVINST) 1752.1B, "Sexual Assault Victim Intervention (SAVI) Program," December 29, 2006. Assigns responsibility for implementing the SAVI Program in the Navy. Requires all Navy commands to be knowledgeable of and to adhere to sexual assault prevention and response requirements. Includes a commander's checklist that prescribes elements for meeting command SAVI Program requirements and ensuring effective command prevention and response to sexual assault incidents. Paragraph b. 7-9 requires Commanding Officers (CO) to implement the victim and support care component of the SAVI program by ensuring:

(7) Victims of sexual assault receive reasonable protection from the alleged offender(s). In cases where the victim and alleged offender are assigned to the same command, COs should consider relocating the victim or offender until the case is legally settled and/or the victim is considered out of danger. The CO will consider both the physical and emotional well-being of the victim in making this decision. The victim's preference should receive primary consideration if at all practicable.

(8) All unrestricted reports of sexual assault involving active duty victims in the command are reviewed by the SACMG on a monthly basis to facilitate monthly victim updates and ensure system coordination, accountability, and victim access to quality services.

(9) Victims receive, at a minimum, monthly updates on the status of their cases until final disposition. The SAVI Command Liaison will coordinate

with the responsible NAVCRIMINVSVC special agent and installation SARC to meet this requirement.

(6) **Marine Corps Order (MCO) 1752.5, “Sexual Assault Prevention and Response,”** February 05, 2008. Implements the DoD Sexual Assault Prevention and Response Program in the Marine Corps. Defines and assigns specific responsibilities throughout the Marine Corps for sexual assault prevention and response. Applies to all Marines, Marine Reservists (active duty/drilling status), and Armed Forces personnel attached to or serving with Marine Corps commands, civilian Marines, and contractors the Marine Corps employs. Paragraph 1, “Purpose,” establishes Marine Corps policy and guidance for addressing specific sexual assault victim needs and related issues--defines sexual assault and required reporting procedures; establishes procedures to protect victim privacy; establishes a mandatory, standardized sexual assault victim assistance program for Service members; and implements a database to track sexual assault trends throughout the Marine Corps.

(7) **Marine Administrative (MARADMIN) Message 175/05, “Sexual Assault Prevention and Response Program Department of Defense (DoD) Updates,”** April 12, 2005. Supplemental policy and guidance to identify key personnel roles and responsibilities in the SAPR program. (MCO 1752.5 pre-dated DoDD 6495.01 and DoDI 6495.02) Paragraph 3b requires all installation commanders, general court-martial convening authorities, and Marine Air-Ground Task Force commanders to establish SARC positions in their commands and ensure a sexual assault response capability within their areas of responsibility 24-hours a day, 7 days a week. The SARC is the focal point for managing responses to all sexual assaults in their commander's area of responsibility. The SARC must be appointed in writing and have sufficient seniority to execute SARC duties successfully. Commanders have discretion to create unit SARC positions down to the battalion and squadron level.

Paragraph 3c requires all deploying battalions, squadrons, and equivalent size commands, training and education commands, and Marine Forces Reserve units to appoint in writing at least two UVAs in the Staff Sergeant or higher grade. Marine Forces Reserve Commanders must determine sourcing for battalion, squadron, and detachment UVAs to ensure coverage in the Marine Corps reserve. UVAs provide information and emotional support to deployed marines and attached sailors, students, and drilling reserves who are sexual assault victims. To minimize re-victimization, UVAs assist victims through the medical, legal, and investigative process. They are also a commander's resource for annual and pre-deployment sexual assault training. In locations where Marine and Family Services exist, UVAs defer case management duties to installation victim advocates.

(8) **Sexual Assault Incident Reporting Database (SAIRD) User Manual, Version V,** October 24, 2005. A central repository for incident-based statistical data that tracks sexual assault incidents. Used for statistical and analytical purposes. Maintained to enhance DoD and individual Service capabilities to analyze trends and to respond to Executive, Legislative, and oversight requests for statistical data relating to sexually-based criminal and other high-interest incidents.

Section 2 lists UVA and VA responsibilities, including responsibility for imputing data in the SAIRD. According to the guidance, incidents should not remain in *Draft* status for more than 30 days--“approximately one month is sufficient to gather and input the required data and have it submitted for acceptance by HQMC.”

Section 3 lists SARC responsibilities, including responsibility for ensuring the responsible victim advocate correctly inputs required data, and incidents do not remain in “Draft status” too long. In addition, the SARC must accept or deny any request from a SAIRD user, victim advocate, or installation to transfer a pending case. The SARC is also responsible for updating the SAIRD to record the disposition when an allegation is resolved.

c. Command Officials

(1) DoDI 6495.02, “Sexual Assault Prevention and Response Program Procedures,” June 23, 2006. Attachment 1 to Enclosure 5, “Commanders checklist for unrestricted reports of sexual assault,” provides that a victim’s commander will:

Ensure the SARC is notified immediately.

Ensure the victim understands the availability of victim advocacy and the benefits of accepting advocacy and support.

Determine the need for temporary reassignment to another unit, duty location, or living quarters on the installation of the victim or the alleged offender being investigated, working with the alleged offender’s commander if different than the victim’s commander, until there is a final legal disposition of the sexual assault allegation, and/or the victim is no longer in danger. To the extent practicable, consider the desires of the victim when making any reassignment determinations.

Ensure the victim understands the availability of other referral organizations staffed with personnel who can explain the medical, investigative, and legal processes and advise the victim of his or her victim support rights.

Emphasize to the victim the availability of additional avenues of support; refer to available counseling groups and other victim services.

Attend the monthly case management meeting as appropriate.

Ensure the victim receives monthly reports regarding the status of the sexual assault investigation from the date the investigation was initiated until there is a final disposition of the case.

Ensure the physical safety of the victim--determine if the alleged offender is still nearby and if the victim desires or needs protection.

Continue to monitor the victim's well-being, particularly if there are any indications of suicidal ideation, and ensure appropriate intervention occurs as needed.

Determine if the victim desires or needs a "no contact" order or a DD Form 2873, "Military Protection Order (MPO)," to be issued, particularly if the victim and the alleged offender are assigned to the same command, unit, duty location, or living quarters.

Throughout the investigation, consult with the victim, and listen/engage in quiet support, as needed, and provide the victim appropriate emotional support resources. To the extent practicable, accommodate the victim's desires regarding safety, health, and security, as long as neither a critical mission nor a full and complete investigation is compromised.

(2) OPNAVINST 1752.1B, "Sexual Assault Victim Intervention (SAVI) Program," December 29, 2006. Assigns responsibility for implementing the SAVI Program in the Navy. Requires all Navy commands to be knowledgeable of and to adhere to sexual assault prevention and response requirements. Includes a commander's checklist with specific elements for meeting command SAVI Program requirements and ensuring effective command prevention and response to sexual assaults. Number 8, "Action," paragraphs b.(7) – b.(9), requires the commanding officer to ensure:

(7) Victims of sexual assault receive reasonable protection from the alleged offender(s). In cases where the victim and alleged offender are assigned to the same command, COs should consider relocating the victim or offender until the case is legally settled and/or the victim is considered out of danger. The CO will consider both the physical and emotional well-being of the victim in making this decision. The victim's preference should receive primary consideration if at all practicable.

(8) All unrestricted reports of sexual assault involving active duty victims in the command are reviewed by the SACMG on a monthly basis to facilitate monthly victim updates and ensure system coordination, accountability, and victim access to quality services.

(9) Victims receive, at a minimum, monthly updates on the status of their cases until final disposition. The SAVI Command Liaison will coordinate with the responsible NAVCRIMINVSVC special agent and installation SARC to meet this requirement.

Enclosure 4, "Command's Checklist for Prevention and Response to Allegations of Sexual Assault," includes all the essential elements for meeting command SAVI Program requirements and ensuring effective command prevention and response to sexual assault incidents. Following these guidelines ensures that commanders address all areas and provide a timely and sensitive response to each sexual assault incident.

2. Did Responsible Officials Respond Adequately to Events Following the Sexual Assault Complaint to Ensure LCpl Lauterbach's Safety and Well-Being?

(1) **DoDI 6495.02, "Sexual Assault Prevention and Response Program Procedures," June 23, 2006.** Enclosure 5.A1., Attachment 1 to Enclosure 5, "Commanders Checklist for Unrestricted Reports of Sexual Assault."

Appendix C. Management Comments



UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

AUG 31 2011

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL

SUBJECT: Department of Defense Response DoDIG Draft Report (Project No. 2008C009),
"Review of Matters Related to the Sexual Assault and Death of Lance Corporal
Maria Lauterbach, U.S. Marine Corps"

This is the Office of the Secretary of Defense response to the DoDIG Draft Report (Project No. 2008C009), "Review of Matters Related to the Sexual Assault and Death of Lance Corporal Maria Lauterbach, U.S. Marine Corps" dated August 3, 2011. I appreciate the opportunity to review and comment on the draft DoDIG report.

I preliminarily concur with the recommendations in the draft report, subject to review of any changes in the final report. Once the final report has been published, I intend to task the Secretary of the Navy with additional actions, based on your findings to include:

- Review current U.S. Marine Corps Sexual Assault Prevention and Response (SAPR) Program instructions for any policy and program implementation deficiencies and/or discrepancies with DoD policy.
- Provide USD (P&R) a description of how the Navy will address the deficiencies and/or discrepancies with an estimated completion date.
- Provide to USD (P&R) by October 28, 2011, evidence of U.S. Marine Corps SAPR program oversight, demonstrating that the problems that existed at the time of the incident have been rectified at Camp Lejeune and, as applicable to other Marine Corps installations.

In addition to these actions, once the final report is complete, I request that you task the Inspectors General of each Military Service to review a random sampling of open sexual assault investigations to determine if victims of sexual assault are being provided with the proper follow-up care and protective actions prescribed by Department and Service policy. Additionally, I request that you task the IG of each Military Services to review a random sampling of closed sexual assault investigations to determine compliance with DoD and Service policies.

I appreciate the opportunity to respond. My point of contact is Major General Mary Kay Hertog, USAF, Director, Sexual Assault Prevention and Response Office. Major General Hertog may be reached at 703-696-9423, email: mary.hertog@wso.whs.mil.

Clifford L. Stanley

cc:
SECNAV
CMC



THE SECRETARY OF THE NAVY
WASHINGTON DC 20350-1000

AUG 25 2011

Mr. James L. Pavlik
Assistant Inspector General for Investigative Policy and Oversight
Department of Defense Inspector General
400 Army Navy Drive
Arlington, VA 22202

Dear Mr. Pavlik:

Thank you for the opportunity to comment on the draft report entitled, "Review of Matters Related to the Sexual Assault and Death of Lance Corporal Maria Lauterbach, U.S. Marine Corps (Project No. 2008C009)." As you know, I have a zero tolerance policy regarding sexual assault by men and women in the Department of the Navy (DON). Sexual assault is absolutely inconsistent with the values of our country and the honor and integrity of our forces.

The DON has made great strides in its efforts to combat sexual assault. Shortly after I took office in 2009, I established the DON Sexual Assault Prevention and Response Office (DON-SAPRO), which is headed by a Senior Executive who reports directly to me, the only such arrangement that exists within the Department of Defense. We have begun many new initiatives since the events which are reported in the Department of Defense Inspector General (DoD IG) review occurred. Many of these initiatives are described in the enclosures to this letter. Sadly, these initiatives were not available at the time of Lance Corporal (LCpl) Lauterbach's murder, making her death even more tragic. Hopefully, the progress that the DON has accomplished in the sexual assault prevention and response (SAPR) program will ensure that other Sailors and Marines are not similarly victimized.

That said, it is important to conduct a careful, objective review of this case, to hold individuals accountable when appropriate, and to continue to learn from any past mistakes. As noted in the draft DoD IG report, a number of DON personnel made certain mistakes in their handling of the sexual assault complaint of LCpl Lauterbach, particularly with respect to the criminal investigation of her complaints. I take these deficiencies very seriously, as does the Naval Criminal Investigative Service (NCIS). As noted in the enclosure from NCIS, the Director of NCIS has already ordered that measures be taken to assess further the shortcomings of the NCIS personnel who were involved in this matter and determine what adverse personnel action, if any, is appropriate in each instance. The Director is also determined to correct expeditiously any remaining systemic deficiencies that have been identified by your draft report.

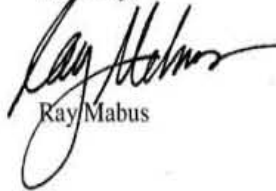
With respect to the command, I believe that while the command, in hindsight, could have paid more attention to its reporting responsibilities in this case, LCpl Lauterbach did receive excellent support from her victim advocates, counselors, and command officials with respect to their immediate response to her complaint. LCpl Lauterbach also received continuing care by the victim advocates.

Enclosed are detailed responses from NCIS, DON-SAPRO, and Headquarters, U.S. Marine Corps that address the report's findings, analysis, and recommendations. These responses also highlight the corrective actions that have been or will be taken and describe the many improvements to the DON's programs that have been implemented since these events occurred in 2007-2008.

After a lot of hard work, the DON has an extremely robust SAPR program in place. We will continue our efforts to ensure that sexual assault is treated as the serious crime that it is, and that throughout the DON, we respond to sexual assault complaints promptly, respectfully, and in full compliance with law and policy.

My point of contact for this matter is Mr. Paul L. Oostburg Sanz, General Counsel of the Navy, should you have any further questions. He may be contacted at (703) 614-1994.

Sincerely,



Ray Mabius

Enclosures (3)



DEPARTMENT OF THE NAVY
HEADQUARTERS
NAVAL CRIMINAL INVESTIGATIVE SERVICE
27130 TELEGRAPH ROAD
QUANTICO VA 22134-2253

MEMORANDUM FOR THE SECRETARY OF THE NAVY

From: Director, Naval Criminal Investigative Service
To: Secretary of the Navy

Subj: REVIEW OF MATTERS RELATED TO THE SEXUAL ASSAULT AND
DEATH OF LANCE CORPORAL MARIA LAUTERBACH, U.S. MARINE
CORPS (PROJECT NO. 2008C009)

In response to the DoD Inspector General (DoD IG) memorandum of August 3, 2011, I am providing the following:

Response to the Findings and Analysis

The draft DoD IG report identified thirteen areas of deficiency within the Naval Criminal Investigative Service (NCIS) response and its investigation of LCpl Lauterbach's rape complaint. The report illustrates the breakdown of fundamental investigative practices and supervisory oversight on this particular investigation, and NCIS concurs with the investigative deficiencies documented in your review.

Corrective Actions

DoD IG recommends that the Secretary take corrective action, as necessary, with respect to officials who the DoD IG identified as accountable for the regulatory violations and procedural deficiencies described in the report. Clearly corrective action is required in this case, as both a means to affix individual accountability, but more importantly, as a method to advance the quality of the NCIS sexual assault response and investigative capability overall.

With respect to individual accountability, the NCIS Inspector General has initiated an internal professional responsibility investigation to assess the actions and performance of the special agent assigned in the LCpl Lauterbach investigation. Additionally, I have ordered and will oversee a comprehensive management review of the NCIS field, regional, and headquarters response to, and oversight of, the investigation.

Subj: REVIEW OF MATTERS RELATED TO THE SEXUAL ASSAULT AND
DEATH OF LANCE CORPORAL MARIA LAUTERBACH, U.S. MARINE
CORPS (PROJECT NO. 2008C009)

These efforts, which had been held in abeyance pending the completion of the criminal trial and our review of the draft DoD IG report, will ensure individual responsibility and accountability for substandard performance or misconduct.

Also, immediately after identifying the problems within this investigation, NCIS initiated a number of organizational measures designed to strengthen its investigative capability on sexual assaults and ensure stronger oversight at the supervisory level in order to prevent a recurrence of the deficiencies of the type that surfaced during the LCpl Lauterbach investigation.

The following is a list of initiatives, measures, and activities implemented or engaged by NCIS since January 2008 to enhance investigative response and capabilities in all investigations.

NCIS Special Agent Basic Training Program (SABTP) at the Federal Law Enforcement Training Center (FLETC)

The NCIS SABTP is the required 8-week follow-on course to the FLETC Basic Investigator's Course for newly hired NCIS special agents. The SABTP employs a "continuing case" practical exercise scenario during which special agents complete a criminal investigation from initial complaint through trial. Since January 2008, the practical exercise has been that of a sexual assault complaint and investigation and special agents are instructed and evaluated on investigative steps specific to the "offender-focused" model adopted subsequent to the Lauterbach investigation.

NCIS Advanced Family & Sexual Violence Training

The NCIS Training Department at the Federal Law Enforcement Training Center developed an advanced course for special agents using recognized subject matter experts (SME) to present on current topics for conducting sexual assault investigations. These SME include research psychologists, toxicologists, and victim advocates among others. This course, presented twice a year, has instructed 116 investigators since its inception in January 2008.

Subj: REVIEW OF MATTERS RELATED TO THE SEXUAL ASSAULT AND DEATH
OF LANCE CORPORAL MARIA LAUTERBACH, U.S. MARINE CORPS
(PROJECT NO. 2008C009)

Additionally, in response to a Governmental Accountability Office recommendation, NCIS obtained 9 seats in the 2011 U.S. Army CID Advanced Sexual Assault Investigations course, thus enhancing NCIS's inter-MCIO cooperation and capability. NCIS intends to pursue additional inter-MCIO training courses, when available.

Mobile Training Team (MTT) for Sexual Assault Investigations & Prosecutions

NCIS participates with the Navy and Marine Corps JAG community to present a training course on sexual assault investigation and prosecution. This annual 16-hour course combines investigators and prosecutors in a shared learning environment to facilitate candid discussion and teamwork. Presenters include nationally-recognized subject matter experts such as research psychologists, forensic specialists, and victim advocates. Fifty NCIS special agents attended the initial course in FY10. MTT presentations are scheduled for Norfolk, VA and Miramar, CA in FY11 and the course is projected as a continuing training opportunity.

DON Cross Functional Team

The Cross Functional Team (CFT) is a multidisciplinary team comprised of DON representatives from Commander Naval Installations Command, DON SAPRO, Master Chief Petty Officer of the Navy, Chaplain Corps, Bureau of Medicine, NCIS, and others, tasked with process improvement for the DON Sexual Assault Prevention and Response program. NCIS has been a participating member of the CFT since 2009. NCIS participation with the CFT has increased its information sharing with relevant and appropriate DON entities within the DON SAPRO enterprise.

NCIS Crime Reduction Program

The Crime Reduction Program (CRP) is a Department of Navy-wide crime awareness and personal safety education program. The CRP is spearheaded by NCIS field offices worldwide and unites law enforcement and community service organizations in a shared goal of educating the Navy and Marine Corps community about common threats to their safety.

Subj: REVIEW OF MATTERS RELATED TO THE SEXUAL ASSAULT AND DEATH
OF LANCE CORPORAL MARIA LAUTERBACH, U.S. MARINE CORPS
(PROJECT NO. 2008C009)

Initiated in FY10, the CRP has facilitated NCIS' ability to conduct more than 250 Sexual Assault Awareness briefings to more than 27,000 attendees. Sexual Assault Awareness is an annual CRP campaign.

Sexual Assault Investigation Stand-Down

In 2009, NCIS conducted an agency-wide stand-down requiring field office senior leadership to exhaustively review all active sexual assault investigations. The case reviews focused on identifying deficiencies and immediately assigning corrective action for the active investigations. The stand-down and review reinforced personal accountability, investigative urgency, supervisory engagement, and thoroughness necessary to successfully complete investigations.

Field Office Inspections

Annually, NCIS "Tiger Teams" from the regional directorates deploy to review field office investigations to ensure they are conducted and reviewed properly, thoroughly, and in a timely manner.

Revised Supervisory Special Agent Case Review Process

A revised, standardized case review process utilized by first line supervisors was implemented in 2009. The revised process emphasized supervisory engagement and oversight spanning the initial response, investigative plan development, and thorough conclusion of investigations.

First line & Mid-Level Supervisor Training Programs

NCIS has historically provided training for Supervisory Special Agents and higher levels of management utilizing the FLETC Management Training Program. However, in January 2010, NCIS revised its 2-week first-line Supervisory Special Agent Training Program and implemented a NCIS-specific curriculum focused on investigative and operational oversight. Additionally, a NCIS-specific middle management training course has been designed for Assistant Special Agents in Charge and Headquarters Division Chiefs and is scheduled for its first iteration in September 2011.

Subj: REVIEW OF MATTERS RELATED TO THE SEXUAL ASSAULT AND DEATH
OF LANCE CORPORAL MARIA LAUTERBACH, U.S. MARINE CORPS
(PROJECT NO. 2008C009)

Both courses provide supervisors tools and techniques to properly manage investigations and to more effectively lead personnel with an emphasis on individual and unit accountability and operational excellence.

NCISHQ Envoy Program

During 2009, the NCIS Criminal Investigations Directorate deployed "Headquarters Envoy Teams" familiar with the administration of all criminal investigations to NCIS field offices. The program researched and compared investigative trends in the field with NCIS established investigative policies and procedures. Results of the comparisons were provided to the field offices for investigative and process improvements.

Reorganized NCISHQ Structure (2010-11)

The 2010 NCIS reorganization emphasized and enabled the Executive Assistant Directors to apply greater influence and oversight on operations and investigations within their geographical regions. Recognizing an opportunity for improved oversight of its Family and Sexual Violence (F&SV) program, NCIS elevated F&SV program direction within the Headquarters hierarchy and incorporated the Threat Management Unit under its responsibility. Lastly, the reorganization enables NCIS Criminal Investigations Directorate to better *Organize, Man, Train, Equip, and Assess* its program resources.

Family & Sexual Violence (F&SV) Program Enhancements

The NCIS Family & Sexual Violence Program, which is predominantly focused on adult sexual assault investigations, obtained additional funding from DON to enhance its capability to respond to allegations of sexual assault. Specific program enhancements include the hiring of 11 investigators who will be permanently placed at field offices and dedicated to sexual assault investigations, training, and prevention/awareness briefs.

Subj: REVIEW OF MATTERS RELATED TO THE SEXUAL ASSAULT AND DEATH
OF LANCE CORPORAL MARIA LAUTERBACH, U.S. MARINE CORPS
(PROJECT NO. 2008C009)

Additionally, a research sociologist and an analyst will be hired and assigned within the Criminal Investigations Directorate at NCIS Headquarters. These permanent personnel will increase continuity and stabilize the level of expertise at the field offices while increasing and improving our ability to analyze data, assess trends within sexual assault investigations, and increase advanced training opportunities for investigators.

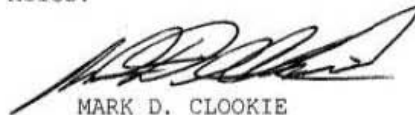
Threat Management Unit (TMU)

The TMU is a 24-hour proactive, cooperative law enforcement/behavioral science capability used to provide immediate analysis and assessment of concerning/threatening behaviors. TMU assists NCIS field elements and Navy and Marine Corps commands with complex and potentially dangerous investigations.

The TMU provides risk assessment which places the concerning/threatening behavior or communication on a continuum of potential violence and provides recommendations regarding investigative strategies and security-related solutions. Since 2009, NCIS has increased the number of trained TMU personnel from 2 to 50. In August 2011, 50 additional special agents will receive TMU training.

DODIG Initiative 2011

Currently, NCIS is working with the DoD IG to develop a peer review process for sexual assault investigations. This review process will refine and enhance sexual assault investigations and related training across the MCIOs.



MARK D. CLOOKIE



DEPARTMENT OF THE NAVY
SEXUAL ASSAULT PREVENTION AND RESPONSE OFFICE
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

August 23, 2011

MEMORANDUM FOR SECRETARY OF THE NAVY

FROM: Jill Vines Loftus, Director Sexual Assault Prevention and Response Office

SUBJECT: Review of Matters Related to the Sexual Assault and Death of Lance Corporal Maria Lauterbach, U.S. Marine Corps (Project No. 2008C009)

As requested in the Memorandum from the Department of Defense Inspector General (DoD IG) dated August 3, 2011, I submit the following responses.

1. Response to the Findings and Analysis with regards to Sexual Assault Program Officials.

a. The Sexual Assault Prevention and Response Office (DON-SAPRO) concurs with the investigative findings documented in the Department of Defense Inspector General (DoD IG) review.

b. The draft DoD IG report found that LCpl Lauterbach was assigned a Uniformed Victim Advocate (UVA) and a civilian Victim Advocate (VA) on the same day she reported being sexually assaulted. The report details the exceptional efforts of the UVA, in particular, to ensure that LCpl Lauterbach received the guidance, advocacy, counseling, and follow-up care she needed to deal with the situation which she faced. The report found the victim advocates complied with governing requirements except for two procedural steps – one regarding the timely inputting of incident data into the Sexual Assault Incident Reporting Database (SAIRD), and another regarding attendance at monthly meetings of the Sexual Assault Case Management Group (SACMG).

2. Response to Recommendations with regards to Sexual Assault Program Officials.

a. DoD IG recommends corrective action, as necessary, with respect to officials identified as accountable for regulatory violations and procedural deficiencies. With regard to the victim advocates, and despite the procedural deficiencies noted, we conclude that both showed great dedication to their responsibilities and sought to support LCpl Lauterbach to the best of their abilities. While systemic improvements are needed to address the procedural deficiencies, we do not recommend administrative actions against these two individuals.

b. In response to the overall findings of the DoD IG report, we recommend that a site visit be conducted at Camp Lejeune to review current SAPR program records and activities, with special attention to Case Management Group meetings. In addition, we recommend that current files of the Sexual Assault Response Coordinator (SARC) at Camp Lejeune and elsewhere be reconciled with SAIRD entries to ensure complete reporting, and that SARCs at Camp Lejeune and elsewhere be required to report monthly on the status of, and attendance at, SACMG meetings.

SUBJECT: Review of Matters Related to the Sexual Assault and Death of Lance Corporal Maria Lauterbach, U.S. Marine Corps (Project No. 2008C009)

Absence of required SACMG participants should be reported through the chain of command to the Assistant Commandant of the Marine Corps (ACMC).

3. Additional Information on Recent and Comprehensive SAPR Program Revitalization Efforts.

a. In addition to these specific corrective recommendations, it is important to note that the Department has undertaken a comprehensive revitalization of its Sexual Assault Prevention and Response (SAPR) program. In September 2009, DON-SAPRO stood-up as a new entity, reporting directly to the Secretary, with the goals of achieving a measurable reduction of sexual assaults, improving Service-level SAPR program management, conducting leadership outreach, and providing a Commander Tool Kit. DON-SAPRO emphasizes sustained leadership engagement in a consistent top-down message and seeks to systemically improve support for both individual victims and command organizations.

b. In the short time since it was stood up, DON-SAPRO has undertaken many initiatives to strengthen the Department's efforts to prevent and respond to sexual assaults, ranging from engaging senior leaders, to sponsoring Service-level initiatives, to building a foundation of objective data. DON-SAPRO benefits the Department in many ways. It provides a single Department-level source of SAPR expertise, visibility of Service-level SAPR programs, consistent policy focus, unique public health perspective, and research capability – all with direct access to senior leadership. DON-SAPRO has a credibility and capability that are unique within DoD, recognized by other Military Departments, and often consulted specifically by entities of the Under Secretary of Defense for Personnel and Readiness. It promotes a consistent top-down leadership message to both Services that sexual assault is completely unacceptable. DON-SAPRO also updates tools for Service-wide application in training individual Sailors and Marines, supporting sexual assault victims, and holding offenders accountable. In addition, DON-SAPRO utilizes newly-created forums and site visits to champion the Secretary's message and priority to leaders and stakeholders DON-wide. Resulting interactions are often, though unintentionally, viewed as "the best training we've had." Of direct importance to the case at issue, DON-SAPRO has introduced a significant data mining capability, thus establishing a credible basis for developing new prevention strategies, highlighting opportunities to refine Service-level SAPR management systems, identifying previously unanticipated needs from future data systems (along with areas where previously desired data is not that important), and addressing Congressional concerns – all while side-stepping the long-delayed OSD deployment of its Defense Sexual Assault Incident Database.

4. The following is an illustrative list of initiatives, measures, and activities implemented or engaged by DON-SAPRO to enhance the Department's SAPR programs.

a. Engage Senior Leaders: DON-SAPRO has undertaken numerous initiatives to engage senior leaders, including hosting the first DON Sexual Assault Prevention Summit for senior leaders in September 2009, and holding two DON Sexual Assault Advisory Council (DON-SAAC) sessions in Fiscal Year 2010. DON-SAPRO meets every two weeks with the Under

SUBJECT: Review of Matters Related to the Sexual Assault and Death of Lance Corporal Maria Lauterbach, U.S. Marine Corps (Project No. 2008C009)

Secretary, with the Secretary regularly, and also with the Vice Chief of Naval Operations and ACMC every other month. In addition, DON-SAPRO ensures that SAPR issues are highlighted at various leadership forums, including the Marine Corps General Officer Symposium, the Marine Corps Sergeants Major Symposium, and the Master Chief Petty Officer of the Navy Conference. In addition, the Secretary also institutionalized a new charter for DON-SAAC in March 2011. The DON-SAAC provides a forum for senior leadership to periodically assess the implementation of the Navy and Marine Corps SAPR programs, learn about new initiatives, evaluate resources, and to ensure that DON has an overarching prevention strategy to reduce the incidence of sexual assault.

b. Develop New Stakeholder Forums: Engaging stakeholders is vital to our SAPR mission, and DON-SAPRO is constantly looking for opportunities to bring stakeholders together. New forums have included weekly meetings with the Navy SAPR Executive Agent and the Director of the Marine and Family Programs Division, the first-ever DON-wide Sexual Assault Response Coordinator Summit (March 2010), and an expanded follow-on Sexual Assault Prevention Summit (May 2011) attended by Navy and Marine Corps installation commanders and regional leaders.

c. DON-SAPRO Team Site Visits: DON-SAPRO team site visits conducted to date have included Norfolk/Tidewater, San Diego, Camp Pendleton, the Pacific Northwest, Gulfport, Hawaii, Guantanamo Bay, Guam, Rota (Spain), Naples (Italy), Sigonella (Italy), Souda Bay (Greece), Japan, Bahrain, Kuwait, and Djibouti. A visit to Camp Lejeune is also already planned. Each site visit has typically included meetings with regional senior leaders and installation commanders; discussions with SARCs, Naval Criminal Investigative Service (NCIS) personnel, Judge Advocates General (JAG), medical personnel, and chaplains; along with facilitated focus group sessions with junior Sailors and Marines.

d. Expanding "Outreach" Within and Beyond DON: DON-SAPRO uses a variety of tools to get the word out about the Department's SAPR mission and initiatives, including Hill briefings, media interviews, published Navy "Rhumb Lines" and Navy "Personal For" messages, public service announcements, a Marine Corps "Prevention" video, and personal remarks by the Director, DON-SAPRO and other SAPR representatives at senior leadership venues and other conferences.

e. Fleet Prevention Training: Training the Fleet is equally important to the success of our SAPR mission. DON-SAPRO has undertaken sexual assault prevention training through the U.S. Fleet Forces Command SAPR Summit; U.S. Fleet Forces Leadership and Responder SAPR Workshops (11 locations world-wide during FY10); Fleet Forces Workshops in FY11 applying "Bystander Intervention" themes with respect to the prevention of sexual assault, alcohol impacts, and suicide (12 locations world-wide); Pacific Fleet Leadership Workshops; and an NCIS Crime Reduction Program featuring training on sexual assault prevention and awareness. Of particular note are "Mentors in Violence Prevention" pilots held at four sites (ten

SUBJECT: Review of Matters Related to the Sexual Assault and Death of Lance Corporal Maria Lauterbach, U.S. Marine Corps (Project No. 2008C009)

presentations) that included leadership and utilized a train-the-trainer approach, resulting in 209 facilitators that impact 5,900 individual Sailors and Marines.

f. Responder Training: Ensuring that responders have the knowledge and tools that they need to care for victims of sexual assault is a core responsibility of DON-SAPRO. We have provided responder training in many forums, including the Marine Corps Victim Witness Assistance Program Conferences in 2010 and 2011; the incorporation of sexual assault training into all major Naval Justice School courses; the development of new courses for JAGs, including Senior Counsel Class on Sexual Assault, Prosecuting Alcohol Facilitated Sexual Assault, and Litigating Sexual Assault; sponsoring JAG/NCIS Mobile Training Teams for "Sexual Assault Investigation and Prosecution"; expanding NCIS Family and Sexual Violence Special Agent training at the Federal Law Enforcement Training Center; promoting SARC web-based training; and supporting the Marine Corps Trial Assistance Program.

g. Build an Objective Foundation: DON-SAPRO seeks to build an objective foundation by making better use of existing data, and by collecting new data. Efforts to date have included a fresh review of anonymous survey data from 2004 (Navy) and 2009 (DON). This review segregated "serious" sexual assaults from total incidents, used separate end-strength data to estimate sexual assault risk by individual rank, used separate NCIS data to estimate sexual assault reporting rates, and assessed incidence trends from 2004-2009. In addition, DON-SAPRO studied 1,270 NCIS case synopses in FY 09-10 Annual Reports to Congress, developed categories of circumstances surrounding sexual assaults, and compared the active duty status and rank of victims and subjects. DON-SAPRO also worked closely with the Defense Manpower Data Center to reorganize survey data on sexual assault incidence and reporting at the United States Naval Academy, restructure other data to compare sexual assault rates and trends by Service, and refine formats for 2011 focus groups at Service Academies. Efforts to collect new data are underway as well, including "special focus" site visits to Navy and Marine Corps locations geared toward the unique environments present at those locations as well as impacts of state law, working with Naval Audit Service on protocols to assess responsiveness of victim "first-contact" processes operated by Service-level SAPR programs, establishing a baseline estimate of sexual assault incidence, exploring secondary "social norms" metrics, and evaluating trend results to assess impacts of pilot initiatives, developing a refined web-based survey tool to explore sexual assault incidence, reporting rates, and "social norms" attitudes and behavior.

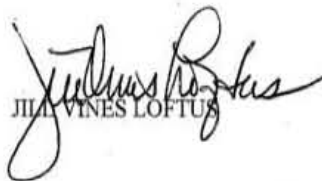
h. Great Lakes Demonstration Project: The Great Lakes Demonstration Project partners subject experts (including Centers for Disease Control), Navy senior leadership, and facility leaders to develop a package of new strategies for preventing sexual assaults in post-recruit students, a discrete high-risk Sailor population. The expected outcome will be a measurable decrease in sexual assault rate and increase in secondary metrics such as Bystander Intervention attitudes and behaviors. Successful elements of this project will be instituted through the Service.

SUBJECT: Review of Matters Related to the Sexual Assault and Death of Lance Corporal Maria Lauterbach, U.S. Marine Corps (Project No. 2008C009)

i. 2011 DON-Wide Sexual Assault Survey: DON-SAPRO has refined the sexual assault survey used in the past and is deployed a revamped survey for 2011. This web-based anonymous survey of Sailors and Marines assesses SA incidence, high-risk groups, circumstances of SA incidents, reporting behavior, "social norms," and bystander intervention attitudes. The survey will provide standardized emphasis on SA incidence, and insights directly relevant to SA prevention strategies. Senior Service leadership support for participation is conveyed through a structured communication plan and site visits.

j. Promoting Bystander Intervention: Promoting bystander intervention is an area in which DON-SAPRO can make a real difference in ensuring that sexual assaults are prevented and reported, and that the victims received the care they need. Efforts underway to promote bystander intervention include coordination with the Naval Education and Training Command on the creation of an updated sexual assault prevention video and continued special training through "Bystander Intervention" Pilots. A pilot program is currently underway at Pensacola "A" schools.

k. SAPR Program Changes Within the Marine Corps: In addition to the Marine Corps participation in many of the initiatives described above, there have been several notable institutional changes to the Marine Corps SAPR program itself. The Marine Corps has hired new full-time SAPR program managers at 18 installations to serve as the primary victim care and reporting coordinators for all units at the installation. In addition, the Marine Corps SAPR Program was realigned within a Behavioral Health organization (along with programs for suicide prevention, family advocacy, substance abuse prevention, and combat operational stress control) to leverage resources, training initiatives, and expertise across overlapping efforts focused on the individual welfare and behavioral health needs of Marines. These efforts have been briefed and coordinated with DON-SAPRO and are clearly in concert with Departmental goals as applied to the unique Marine Corps culture.



JILL VINES LOFTUS



DEPARTMENT OF THE NAVY
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IN REPLY REFER TO
5800
CL
24 Aug 11

MEMORANDUM FOR THE DEPARTMENT OF DEFENSE INSPECTOR GENERAL

From: Director, Marine Corps Staff
To: Inspector General, Department of Defense

Subj: REVIEW OF MATTERS RELATED TO THE SEXUAL ASSAULT AND DEATH OF
LANCE CORPORAL MARIA LAUTERBACH U.S. MARINE CORPS (PROJECT NO.
2008C009)

Ref: (a) DoD IG ltr of 3 Aug 11
(b) MCO 1752.5 of 28 Sep 04
(c) ALMAR 053/04
(d) MARADMIN 175/05
(e) MARADMIN 615/05
(f) DoDI 6495.02 of 23 June 06
(g) MCO 1752.5a of 5 Feb 08

Encl: (1) Analysis
(2) Chronological Timeline of Relevant Events

1. Per the Commandant of the Marine Corps' request, this letter responds to reference (a), the draft Department of Defense Inspector General's (DoD IG) investigation report dated 3 August 2011. Based on the findings provided in the draft investigation, viewed under the circumstances as they were known at the time, the Marine Corps does not concur with the report's conclusion that command leaders and participants involved acted "inadequately" to Lance Corporal Lauterbach's allegations. The Marine Corps also does not concur that command leaders and participants failed to remain sufficiently engaged and monitor LCpl Lauterbach's well-being throughout the sexual assault investigative process. The Marine Corps does concur, however, with the DoD IG's conclusion that Combat Logistics Regiment (CLR) 27, in combination with the assignment of and support provided by the Uniformed Victim Advocate (UVA), adequately addressed LCpl Lauterbach's physical safety.

2. The Marine Corps concurs with the following findings:

a. Upon receiving the complaint from LCpl Lauterbach, LCpl Lauterbach's Officer in Charge (OIC) assigned a UVA and ordered Laurean to cease all contact with LCpl Lauterbach;

* * Subj: REVIEW OF MATTERS RELATED TO THE SEXUAL ASSAULT AND DEATH OF
LANCE CORPORAL MARIA LAUTERBACH U.S. MARINE CORPS (PROJECT NO.
2008C009)

b. The UVA immediately explained the sexual assault and victim advocate programs to LCpl Lauterbach and accompanied her to NCIS;

c. NCIS immediately initiated an investigation into the alleged sexual assault, which continued with the help of the CLR-27 Legal Services Support Center until her unfortunate death;

d. The UVA immediately accompanied LCpl Lauterbach to the Family Counseling Center for services, and the Family Counseling Center scheduled a counseling appointment for the following day;

e. [REDACTED], Commanding Officer, CLR-27 also immediately reassigned LCpl Lauterbach and excused her from unit events where Laurean might be present in order to avoid possible interaction between LCpl Lauterbach and Laurean.

f. In an abundance of caution and despite limited evidence, [REDACTED] initiated Military Protective Orders (MPO), renewed them upon expiration, and kept them in effect throughout the investigation until LCpl Lauterbach's unfortunate death; and

g. Upon LCpl Lauterbach's request, the UVA maintained daily contact with LCpl Lauterbach instead of transferring her case to a civilian Victim Advocate;

3. In light of these findings, the command responded adequately during events at hand. Therefore, adverse action against the persons identified in the draft IG investigation is unwarranted.


J. J. WILLIAMS

ANALYSIS

The following subparagraphs topically address the investigation's findings and conclusions regarding the Marine Corps:

1. Data Entry into the Sexual Assault Incident Reporting Database (SAIRD).

a. The draft report finds that the first Sexual Assault Incident Reporting Database (SAIRD) entry report on the matter appeared on 23 November 2007, six months later than the regulatory reporting date, and it criticizes the Uniformed Victim Advocate (UVA) for not having SAIRD access and failing to enter the SAIRD entry in a timely manner. According to the report the civilian Victim Advocate (VA) and the Command Sexual Assault Response Coordinator (SARC) were therefore ultimately responsible for entering the assault allegation data into SAIRD. Ultimately, the report concludes that the SAIRD data, if properly recorded, "would have alerted the Installation SARC to a new unrestricted sexual assault case," who in turn "would have informed the Installation SARC before conducting the monthly sexual assault [Case Management Group] meetings and invite attendees."

b. While the parties involved were unduly late entering information into SAIRD, the report improperly speculates upon the Installation SARC's actions and any resulting impact that the Installation SARC's actions might have had on this matter. Rather than speculate, it would be more appropriate to weigh this late data entry against the actions that individuals took upon receiving information from LCpl Lauterbach. For example, upon receiving the complaint from LCpl Lauterbach, LCpl Lauterbach's Officer in Charge (OIC) assigned a UVA and ordered Laurean to cease all contact with LCpl Lauterbach. The UVA explained the sexual assault and victim advocate programs and accompanied LCpl Lauterbach to NCIS. NCIS immediately initiated an investigation into the alleged sexual assault, which continued with the help of the Combat Logistics Regiment-27 (CLR-27) Legal Services Support Center until her unfortunate death. The UVA immediately accompanied LCpl Lauterbach to the Family Counseling Center for services, and the Family Counseling center scheduled a counseling appointment for the following day. Upon LCpl Lauterbach's request, the UVA maintained daily contact with LCpl Lauterbach instead of transferring her to a civilian Victim Advocate as was standard procedure. These individuals' responsive care outweighs any speculative harm caused by a failure to enter data into a computer database. It is difficult to project how the mere act of entering the data into SAIRD would have improved upon the delivery of services to the victim in this case.

c. Ultimately, LCpl Lauterbach's UVA reported the incident into SAIRD. Despite, the late entry into SAIRD, LCpl Lauterbach was provided the services and protection called for by the response program. LCpl Lauterbach was offered the support services of a

civilian victim advocate. She declined such support, but remained in constant contact with her UVA and received regular counseling and support from the Family Service Center professionals throughout the process. The only instances where she did not receive counseling or treatment occurred on the occasions where she canceled her own appointments.

2. The Sexual Assault Response Protocol Checklist.

a. The draft report finds that [REDACTED] did not use the SAPR checklist, yet it provides no assessment of harm beyond mere speculation of how not using this checklist affected the facts and circumstances in this matter.

b. The report overvalues the checklist under the circumstances. Though often a useful device, checklists are an additional tool that augments the commander's training, experience, and judgment. Despite the fact that the Commander did not use a checklist, he still ensured that LCpl Lauterbach was provided with sensitive care, resources, and support. In this instance, the UVA was [REDACTED] command representative to LCpl Lauterbach. The UVA and civilian VA, according to the investigation, "generally complied with governing requirements, including completing a VA Sexual Assault Response Protocol Checklist and a VA Job Description checklist." Further, as [REDACTED] representative, the UVA "provided immediate and ongoing intervention and support to Lauterbach," informed LCpl Lauterbach about her reporting rights, and informed her about advocacy services. Checklists are meant to be safeguards. There is no indication that failure to complete the checklist in this case caused or incurred any of the harms against which the checklist is designed to guard.

3. [REDACTED] and CLR-27's Actions.

a. The draft report finds that the UVA was the only individual involved in the process to update LCpl Lauterbach as the investigation progressed. It is critical of [REDACTED] for having spoken with LCpl Lauterbach on only one occasion, in which he told her that her case was still being investigated. It also criticizes [REDACTED] for assuming that others had updated LCpl Lauterbach on the case status, as well as criticizing the Command SARC for believing that NCIS and the Command were handling the issues related to sexual assaults. Lastly, it cites that "neither [REDACTED] nor anyone else in LCpl Lauterbach's chain of command could remember explaining the counseling, medical, and legal organizations available to support her, or the legal and investigative process she would encounter following the sexual assault report." As a result, it concludes that (1) [REDACTED] made no effort to monitor LCpl Lauterbach's well-being and that (2) CLR-27 did not remain engaged with LCpl Lauterbach or monitor her well-being throughout the sexual assault investigative process. The investigation also concludes, "Overall, responsible Combat Logistics

Regiment command officials responded inadequately to LCpl Lauterbach's sexual assault complaint."

b. Here once again, the report overstates the relevance of the findings and draws inaccurate conclusions. Under the circumstances, [REDACTED] used the most effective tools available to him in order to properly investigate the matter, protect the parties involved, and maintain objectivity. In all cases, the law requires commanders, like [REDACTED], to remain objective and protect the constitutional rights of all parties, to include the accused. Commanders must avoid the appearance of having any interest other than an official interest in the prosecution of the accused in order to maintain the legal authority to convene a case, and ultimately hold offenders accountable for their actions. Commanders must also remain impartial in order to avoid "unlawful command influence" or the appearance thereof -- a legal concept that can result in the dismissal of all charges. [REDACTED] balanced the limited facts and evidence available to him and initiated successive Military Protective Orders (MPO) renewable every 90 days. He issued these MPOs in an abundance of caution and kept them in effect throughout the investigation until LCpl Lauterbach's unfortunate death. He also immediately reassigned LCpl Lauterbach in order to avoid interaction between LCpl Lauterbach and Laurean. In sum, he used meaningful tools available to him as a commander to take responsible action.

c. The draft report also cites that CLR-27 officials took no action on two possibly related harassment incidents. Yet it also acknowledges that NCIS was unable to link either incident to the sexual assault complaint after looking into both incidents, and that the investigators informed [REDACTED] that there was nothing else he could do. Without further justification, the draft report concludes that CLR-27's responsibility "to remain actively involved in the sexual assault complaint extended to the two additional incidents in which LCpl Lauterbach may have been victimized." However, the draft report also concludes that LCpl Lauterbach's chain of command "adequately addressed her physical safety after the sexual assault report."

d. The Marine Corps concurs that CLR-27 adequately addressed LCpl Lauterbach's physical safety. The chain of command notified NCIS and opened an investigation. Without evidence to move forward toward prosecution, there is little more a commander can do under the law. [REDACTED] had MPOs in effect throughout these events and LCpl Lauterbach continued her counseling.

4. Monthly Case Management Group (CMG) Meetings.

a. The draft report finds that [REDACTED] the UVA, the Command SARC, and the civilian VA failed to attend the monthly CMG meetings. The report also finds that CMG commenced periodic meetings

since 2006, but was not functioning fully in accordance with DoD sexual assault policy until January 2010. Lastly, the report finds that the Marine Corps Installation-East SARC did not convene monthly meetings during the period covering LCpl Lauterbach's sexual assault complaint. Contrary to these findings, the report also finds that the CMG conducted meetings in October, November and December of 2007, and that the Command SARC attended an October 2007 meeting, though he did not discuss LCpl Lauterbach's case. As a result, the report concludes that the CMG professionals did not review LCpl Lauterbach's case "to help assure her well-being and recovery following the sexual assault."

b. In light of all the facts and circumstances, this discrepancy must be weighed against the actions taken on LCpl Laughterbach's behalf. The CMG meetings did not address Laughterbach's case. However, as previously discussed, command representatives did remain engaged with LCpl Lauterbach. As the report indicates, LCpl Lauterbach remained in constant contact with her UVA, and was provided regular counseling through the Family Service Center. There is no evidence that these same facts, if briefed at the CMG, would have changed the situation at hand.

5. IG Recommendations.

a. The IG recommends that the Secretary of the Navy "take corrective action, as necessary, with respect to officials whom we identified as accountable for the regulatory violations and procedural deficiencies described in this review." However, the draft report is unbalanced and the conclusions do not suit its findings.

b. The investigators scrutinize how the command responded to the allegations without considering the facts and circumstances surrounding the allegation. The report omits relevant facts that clarify why individuals involved took particular actions. The command officials involved responded to the known facts and circumstances surrounding the allegation without the benefit of hindsight. For example, although Lauterbach alleged that she "felt raped," the evidence that she provided to NCIS and CLR-27 at the time evidenced neither violence nor non-consent. Her actual statements to officials indicated that, on both occasions, Laurean stopped sexual intercourse upon her request. Nothing from Lauterbach or anything otherwise indicated at the time that she felt physically threatened by Laurean. She never indicated any fear of Laurean to anybody involved, and nobody had seen the two individuals together since the issuance of MPOs. These facts are relevant because they constitute the ground-truth lens through which command representatives had to view this matter for response. Under the totality of facts and circumstances known at the time, the command personnel acted promptly and adequately with LCpl Lauterbach's safety and well-being in mind. Therefore, adverse action upon the persons identified in the draft report is not warranted.

c. However, as we continue to learn, we will work to improve our policies and procedures for responding to sexual assault allegations and take corrective actions where deficiencies are found. We have always improved upon, and we continue to improve upon, our SAPR policies and procedures. Before the incident, HQMC was in the process of updating MCO 1752.5. HQMC finalized MCO 1752.5A on 5 Feb 08, after the events at hand. HQMC continues to improve upon lessons learned and is currently in the process of drafting MCO 1752.5B. The SAIRD and SARC inefficiencies in this instance, however, were individual-driven, not program-driven, and we have corrected these inefficiencies. Since the event, the USMC has hired full-time civilian SAPR program managers. The SAPR program managers provide oversight for subordinate Command SARCs and certified UVAs. They also conduct monthly Case Management Committees and affect communication between SARCs. The SAPR program managers also plan, design, evaluate, and execute the full range of SAPR services. These duties also include assisting commanders with properly implementing and sustaining SAPR programs; inspecting and maintaining the II MEF victim support system; providing prevention program training to chaplains, judge advocates, and law enforcement. Showing our commitment toward improvement, II MEF, for example, has directed all commanders to publish a "Commander's Protocol" or standard operating procedure for responding to allegations of sexual assault.

Subj: DOD IG REVIEW OF MATTERS RELATED TO THE SEXUAL ASSAULT AND DEATH OF
LANCE CORPORAL MARIA LAUTERBACH, U.S. MARINE CORPS (PROJECT NO 2008C009)

Chronology of Relevant Facts:

26 Mar 07: Date of alleged rape 1.
9 Apr 07: Approximate date of alleged rape 2.
11 May 07: Lauterbach notifies OIC of alleged rape. OIC notifies UVA, Company Commander, and NCIS initiates investigation. No SAFE kit examination due to Lauterbach's late reporting.
12 May 07: CO, CLR-27 [REDACTED] receives information of the alleged events. Lauterbach moved to French Creek JRC. OIC accompanies Lauterbach to family Service Center for counseling and follow-up scheduling.
14 May 07: Medically estimated date of conception for Lauterbach's pregnancy (unknown to her at the time). Initial MCCS victim assessment.
16 May 07: CLR 27 gives a brief on sexual assault to Group consolidated Admin Center (GCAC).
18 May 07: NCIS questions Laurean. Laurean denies having sexual contact.
22 May 07: Laurean invokes Art. 31(b) UCMJ rights
23 May 07: Lauterbach has a counseling session with licensed Clinical Social Worker.
24 May 07: CLR 27 issues a 30 day MPO.
6 Jun 07: Lauterbach has a counseling session with licensed Clinical Social Worker.
25 Jun 07: MPO reissued for 90 days.
27 Jun 07: Lauterbach discovers that she is pregnant and provides a new statement alleging that the pregnancy was a result of the 9 Apr 07 event. DNA tests at this juncture are medically threatening to mother and child.
6 Jul 07: Lauterbach fails to show for counseling session.
12 Jul 07: Lauterbach's case closed for nonattendance. Clinician attempted outreach before closing the case.
7 Aug 07: Lauterbach attends counseling and treatment.
6 Sep 07: Lauterbach attends counseling and treatment.
17 Sep 07: Lauterbach requests permission to live off base via her chain of command.
20 Sep 07: MPO reissued through 23 Dec 07.
5 Oct 07: Lauterbach attends counseling and treatment.
18 Oct 07: NCIS report recommends no action until DNA can be obtained. CLR-27 believes that an Art. 32 investigation is appropriate.
22 Oct 07: CLR-27 submits a request for legal services to the Legal Services Support Section, CLNC.
31 Oct 07: Lauterbach receives approval to move into base housing due to her pregnancy, but moves into an off-base apartment without telling her command.
5 Nov 07: Lauterbach recants that her baby is the product of Lourean's alleged rape. CLR-27 CO continues to pursue the investigation.
7 Nov 07: Lauterbach attends counseling and treatment.
6 Dec 07: Lauterbach cancels counseling session and reschedules for 17 Dec 07.
14 Dec 07: Lauterbach's Sgt roommate sees Lauterbach driving to work. Lauterbach leaves the CLR-27 at 1200 after the duty day. Lauterbach expresses concern to her OIC about Lourean's presence at the party and does not attend the party. Lauterbach leaves a note that she can no longer take Marine Corps life and will be "going away." She makes a large ATM withdrawal. Last day Lauterbach is seen alive.
15 Dec 07: Somebody purchases a one-way bus ticket to El Paso departing the same evening in Lauterbach's name.
17 Dec 07: Lauterbach is absent from her counseling session.

Encl 2



Inspector General Department of Defense

